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In The

Supreme Court of the United States

Spring Session, 1970

No. 1236

ELAM REAMUEL TEMPLE

Petitioner

Vs:

THE NORTH CAROLINA STATE BAR

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

JOHN W. HINSDALE
808 Lawyers Building
Raleigh, North Carolina
Attorney at law for Petitioner

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THE NORTH CAROLINA STATE BAR

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

To: The Honorable Warren Earl Burger, Chief and to the Honorable Associate Justices of the Supreme Court of the United States of America.

Petitioner, Elam Reamuel Temple, respectfully prays for a writ of certiorari to the Supreme Court of North Carolina and the North Carolina Court of Appeals to review the final judgments entered on August 14, 1968, November 13, 1968, January 21, 1969, October 22, 1969, December 2, 1969.

OPINIONS BELOW

Petitioner was denied due process of law on the grounds of his assignment of errors set forth in the record proper and was denied a new trial on the grounds of newly discovered evidence by the Superior Court of Johnston County, North Carolina; the North Carolina Court of Appeals and the Supreme Court of North Carolina. The judgments and opinions of the Superior Court, the North Carolina Court of Appeals and the Supreme

Court of North Carolina are contained in the Appendix. Reported in 2 N.C. App. 91.

JURISDICTION

The jurisdiction of the Court is invoked under Act of Congress of June 25, 1948, 28 U.S.C.A. 1257 (3)

SUMMARY STATEMENT

Petitioner was charged with professional misconduct in the Superior Court of Johnston County, North Carolina September 1966. As a first cause of action the North Carolina State Bar, hereinafter referred to as complainant, alleged that on or about July 18, 1963 petitioner attempted to engage in the illegal traffic of counterfeit money by offering to sell to a Federal Revenue Agent counterfeit Federal Reserve Notes, that no evidence as to the counterfeit Federal Reserve Notes was offered at the trial of the cause; as a second alleged cause of action petitioner was accused of preparing or caused to be prepared certain affidavits in re estate and last will and testament of Nancy Williams; that as an alleged third cause of action petitioner was accused of altering a promissory note and deed of trust from two hundred ($200.00) dollars to twenty two hundred ($2200.00) Dollars. Petitioner was tried pursuant to N.C.G.S. 84-28 (d) (f) which is set forth in the appendix. Petitioner filed an answer, demurrer, motions to strike, plea in bar, plea of statute of limitations as will appear of record. The demurrer, plea in bar, plea of statute of limitations and motions were denied and made the subject of appeal to the North Carolina Court of Appeals and the North Carolina Supreme Court. In October 1967 the matter was tried in the Superior Court of Johnston County, North Carolina and from a jury verdict against petitioner he appealed entering some forty seven assignment of errors.

The constitutional questions presented in this petition were raised in the North Carolina Court of Appeals and the Supreme Court of North Carolina.

The North Carolina Court of Appeals affirmed the lower Court decision August 14, 1968 . . . (2 N.C. App. 91). October 19, 1968 petitioner petitioned the N.C. Court of Appeals for a rehearing which was granted and the N.C. Court of Appeals sustained its original decision on November 13, 1968. On December 3, 1968 notice of appeal was filed with the N.C. Supreme Court and the appeal was denied January 21, 1969. On February 27, 1969 petitioner filed a motion for a new trial on the grounds of newly discovered evidence in the Superior Court of Johnston County, N.C. This motion was heard and denied May 5, 1969. Petitioner appealed and the appeal was dismissed by the N.C. Court of Appeals October 22, 1969. Petitioner petitioned the N.C. Supreme Court for Writ of Certiorari which was denied December 2, 1969. Notices of petition for Writ of Certiorari to the United States Supreme Court were filed with the N.C. Supreme Court on December 12, and December 27, 1969.

The Federal Questions sought to be reviewed are, to wit:

RAISING OF THE FEDERAL QUESTIONS

(1) That petitioner was deprived of his constitutional rights by the delay in the bringing of the action in violation of United States Constitution Amendment XIV Sec 1, portion thereof as follows: "Nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny any person within its jurisdiction the equal protection of the law." And Amendment V U.S. Constitution provides "nor be deprived of life, liberty, or property without due process of law." Assignments of errors Nos. 1 & 2 of the trial Court.

(2) That petitioner was deprived of his constitutional rights (assignment of errors Nos. 17 & 24 of the trial record) which were directed to the error of the Court in granting the motion of the U.S. Government to quash the subpoenas of U.S. Government Secret Service Agents Spicer and Tarlton to appear and testify for the petitioner in violation of Amendment VI of the U.S. Constitution the portion thereof which reads: "In all

criminal prosecutions the accused shall have the right to a speedy and public trial, to have compulsory process for obtaining witnesses in his favor."

(3) That petitioner was deprived of his constitutional rights by the denying of his motion for a new trial on the grounds of newly discovered evidence in violation of Amendment VI U.S. Constitution portion thereof "to have compulsory process for obtaining witnessess in his favor" and Amendment XIV Sec 1 U.S. Constitution portion thereof "Nor shall any state deprive any person of life, liberty or property without due process of law, nor deny any person within its jurisdiction the equal protection of the law." and Amendment V U.S. Constitution portion thereof which reads: "nor be deprived of life, liberty or property without due process of law."

The constitutional questions were raised in the trial Court, the N.C. Court of Appeals and the Supreme Court of North Carolina. The Court of Appeals for North Carolina and the North Carolina Supreme Court did not expressly pass upon the constitutional questions and neither did they discuss in a judicial manner the various other objections and exceptions interposed by petitioner in this cause.

QUESTIONS PRESENTED

(1) Was the petitioner deprived of his constitutional rights by the delay in the bringing of the action by complainant?

(2) Did the trial Court err by preventing petitioner from presenting his evidence at the trial of the cause in October 1967?

(3) Was the petitioner deprived of his constitutional rights by the denial of his motion for a new trial on the grounds of newly discovered evidence?

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

The instant case is within the statutory provisions relied

on to confer jurisdiction on this Court. That the following authorities sustain his contention that the Court has jurisdiction of and should take cognizance of the instant case as being within the provisions of 28 U.S.C.A. 1257 (3); Wilson vs Cook 327 U.S. 474, 66 S. Ct. 663, 90 L.Ed. 793 in which the Court said (66 S Ct 663 at 666) "This jurisdictional requirement is satisfied only if the record shows that the question of validity under Federal Law of the state statute, as construed and applied, has either been presented for decision to the highest court of the State or has in fact been decided by it and that its decision was necessary to the judgment." In Honeyman vs. Hanan 300 U.S. 14, 57 Sup Ct 350, 81 L Ed 476 the Court stated: "it must appear that its decision was necessary to the determination of the cause and that it was actually decided, or that the judgment rendered could not have been given without deciding it." See also Williams vs. Kaiser 329 U.S. 471. In the case of Louisiana Vs. Reswehler 329 U.S. at page 468 Justice Frankfurter stated: "insofar as due process under the Fourteenth amendment requires the State to observe any of the immunities, that are valid as against the Federal Government by force of specific pledges in the concept of ordained liberty and thus through the Fourteenth Amendment becomes valid as against the state." "In short the due process clause of the Fourteenth amendment did not withdraw the freedom of a state to enforce its own notions of fairness in the administration of justice, unless, as it was put for the Court by Mr. Justice CORDOZO, 'in so doing it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked fundamental.'"

QUESTION NUMBER ONE

In the instant case it is contended that the question of unreasonable delay (statute of limitations) was properly raised and presented to the trial tribunal, the North Carolina Court of Appeals and the Supreme Court of North Carolina. Petitioner argues that his demurrer should have been sustained. The complaint on its face as to the first cause of action is alleged to

have happened on July 18, 1963 and that summons was not issued until September 8, 1966, more than three (3) years after the alleged event.

In the case of DOCKERY VS. TOWN OF HAMLET 162 N.C. 118 the Court stated: "time is an essential part of the cause of action and this should appear in the complaint and a general denial in the answer is sufficient and if this does not appear in the complaint it is grounds for demurrer for failure to state a cause of action." That N.C.G.S. 1-52 (2) provides "upon a liability created by statute, other than a penalty or forfeiture, unless some other time is mentioned in the statute creating it, it is barred in three years." That N.C.G.S. 1-54 (1) provides: "(1) Against a public officer, for a trespass under color of his office, (2) upon a statute for a penalty or forfeiture, where the action is given to the State alone, or in whole or in part to the party aggrieved, or to a common informer, except where the statute imposing it prescribes a different limitation is barred in one year." Other than these statutes the N.C. Legislature has never enacted any statute which would have any application to the instant case and therefore petitioner argues that the general statute of limitations applies.

In LIMITATIONS OF ACTIONS 45 A.L.R. 1110 Sec 69 68 Ill. 151 People Ex Rel Vs. Allison (1873) it is stated: "It has been said generally with respect to disbarment proceedings that in analogy to our statutes which bar prosecution for misdemeanors there ought to be a limit to the time in which information could be filed." "It seems however that except in the few states which have enacted specific statutes on the subject there is no limitation on the time for institution of disbarment proceedings except the inherent power of the Court to refuse to hear an application to disbar which has been unreasonably delayed." In the case of PEOPLE VS. HOOPER (1905) 218 Ill. 313 the Court stated: "The Court will consider any unexplained, unreasonable delay in presenting the charges and also whether by reason of such delay the accused has been deprived of a fair opportunity of securing proof to meet the ac-

cusations." In the case of STATE OF NEBRASKA STATE BAR Vs. BATES 77 N.W.2d 302 the Court stated: "Laches is an equitable doctrine and does not result from mere passage of time. The objection of laches is not tenable to defeat a cause if there has been no material change in position of, or prejudice by delay to the objector." See also Ex Parte Dozier (Ala) 77 So.2d 903, 1953) and In Re Evans 72 Okla. 216, 179 P.922.

Petitioner argues that the unreasonable delay in the bringing of the action violated the spirit and meaning of AMENDMENT XIV Sec I U.S. Constitution and AMENDMENT V of U.S. Constitution. That there occurred considerable changes in the circumstances surrounding the alleged event. That U.S. Marshall White was killed in a car accident and that Secret Service Agent L. T. Huff reportedly died about a year before the trial of the cause. That another witness, Bodrick, was killed by a State Patrolman before the trial of the cause and the Clerk of Court died of cancer. All of these witnesses were material to the alleged events.

The legislatures of the various states which have enacted statutes bearing on the time limit within which prosecution may be commenced in disbarment proceeding ranges in time from one to three years.

For the reasons stated herein petitioner contends that his demurrer should have been sustained, and that certiorari should be granted.

QUESTION NUMBER TWO

Petitioner's argument number two is directed to the error of the Court in preventing him from presenting his evidence at the trial of the cause in October 1968. Assignment of errors Numbers 17 & 24 were directed to the error of the Court in granting the motion of the U.S. Government to quash the subpoenaes of Secret Service Agents Vernon Spicer and C. M. Tarlton to appear and testify on behalf of petitioner. It was shown that the subpoenaes were duly served on each of said witnesses and that they were present in Court for the purpose

of being witnesses for petitioner when the U.S. Attorney appeared and made a motion to quash the subpoenaes which was granted by the Court under authority of a letter issued by the then U.S. Attorney General which is set forth in the Appendix. Petitioner argues that the letter issued by the Attorney General of the United States was not applicable in the present case and that same was and is unconstitutional. The record presents that the alleged acts of misconduct of dealing in counterfeit money were associated with Agents of the United States Secret Service and in no way was connected with agents of the United States Department of Justice. Petitioner challenges the validity of the issue of the order of the Attorney General of the United States which makes the head of a department rather than a Court the determinator of the admissibility of evidence.

The leading case on the subject under consideration appears to be TOUHY VS. RAGEN 340 U.S. 462 (1950). In that case Justice Frankfurter speaking for the Court stated: "Specifically, the decision and opinion in this case cannot afford a basis for a future suggestion that the Attorney General can forbid every subordinate who is capable of being served by process from producing relevant documents and later contest a requirement upon him to produce on the ground that procedurally he cannot be reached. In joining the Court's opinion I assume the contrary . . . that the Attorney General of the United States can be reached by process. Though he may be reached what disclosure he may be compelled to make is another matter. But unless the Attorney General's amenability to process is impliedly recognized we should candidly face the issue of immunity pertaining to the information which is here sought. To hold now that the Attorney General is empowered to forbid his subordinates, though within a court's jurisdiction, to produce documents and to hold later that the Attorney General cannot in any event be procedurally reached would be to apply a fox hunting theory of justice that ought to make Bentham's skeleton rattle."

Further in the case of McFadden Vs. Avco Corp. 278 F Supp 57, U.S. Dist. Court., M.D. Ala. July 1967 Dist. Judge PITTMAN stated: "Reliance was made on the Touhy Case, two years later however, the decision of the Court in Reynolds Vs. U.S. 345 U.S. 1, 73 S.Ct. 528, 97 L Ed 727 (1953) seemed to cast doubt upon the Touhy holding. There unlike the earlier case, the Justice felt compelled to consider the merit of the alleged privilege. They made clear that in determining whether to compel disclosure of an accident report which the Secretary of the Air Force had ordered withheld the question of whether a valid privilege was being raised was for the District Court and not for the Secretary of the Air Force. Judicial control over the evidence in a case cannot be abdicated to the caprice of executive officers. (73 S. Ct at 533). Disclosure was not ordered in that case because the Court was satisfied that military secrets were at stake and thus a valid claim of privilege existed."

The Fifth Circuit in the case of N.L.R.B. Vs. Capital Fish Co. 294 F 2d 868 (Fifth Circuit 1961) recognized that a valid privilege was the only justification for failure to disclose government records and observed that the functions of a housekeeping statute was to give the head of the Agency or other party the opportunity to decide whether to assert the privilege, not to create a privilege per se. There a trial examiner quashed a subpoena issued to an N.L.R.B. investigator because the Board's General Counsel had refused to let him testify. The Court rejected the idea that the General Counsel should have been served noting that this would impose an additional and unnecessary burden on parties seeking to obtain Government records . . . without the slightest compensating improvement in the disposition of justice. Commenting on the Reynolds case as it modified the Touhy case the Court stated: "When a party has filed a request for evidence of testimony and the request can be properly denied only if the evidence or testimony is privileged, the question of privilege is squarely raised by an unexplained refusal to comply as by an express claim of privilege and the Courts must decide the question."

In the present case the Attorney General of the United States had no legal status in appearing to quash the subpoenas of witnesses Secret Service Agents Vernon Spicer and Secret Service Agent Tarlton for that their functions were under the jurisdiction and directions of a Department of the Government other than the United States Department of Justice to wit: THE Secretary of the Treasury of the United States. That the authority which the trial Court used for the granting of the motion to quash had no application at all to Secret Service Agents of the Treasury Department of the Government.

Conceding for the purpose of argument, but not admitting, that the letter of the Attorney General of the United States was applicable in the present case it is submitted that the trial Court made no inquiry and made no findings of facts that the appearance and testimony of the Secret Service Agents would involve privileged testimony, national security of secrets of the Government or otherwise violate the rights of the Secretary of the Treasury, or the United States Department of Justice. Petitioner argues that the denial of the testimony of Secret Service Agents Spicer and Tarlton violated the spirit and meaning of the due process clause of AMENDMENT XIV Sec. 1 of the United States Constitution, AMENDMENT V of the United States Constitution and AMENDMENT VI of the United States Constitution. That for the reasons stated herein certiorari should be granted.

QUESTION NUMBER THREE

Question number three is directed to the error of the Court in denying his motion for a new trial on the grounds of newly discovered evidence.

The case of STATE VS. CASEY 201 N.C. 620 appears to be in line with the Federal cases dealing with the granting of new trials on the grounds of newly discovered evidence. In that case the Court stated and set forth certain prerequisites to the granting of a new trial on the grounds of newly discovered evidence as follows:

(1) That the witnesses will give the newly discovered evidence.

(2) That the newly discovered evidence is probably true.

(3) That it is competent, material and relevant.

(4) That due diligence was used and proper means were employed to procure the testimony at the trial.

(5) That the newly discovered evidence is not merely cumulative.

(6) That it does not tend only to contradict a former witness or to impeach or discredit him.

(7) That a different result will probably be reached and that right will prevail.

The only argument which the complainant presents that these pre-requisites had not been complied with appears on page nine (9) of their brief in the Court of Appeals for North Carolina as follows: "The affidavits attached to the respondent's motion for a new trial shows themselves to be either merely cumulative or contradictory and his failure to show that due diligence was used to procure the testimony at the trial." The facts and the record does not sustain this argument. How could the evidence contained in the affidavits of Rev. Frank A. Armstrong, Dan (-) Perry and Roland Smith be cumulative or contradictory when no other person testified at the original trial to the contrary. May it be observed by the Court that the trial Court made the inaccurate findings of facts that all of the witnesses had been subpoened and were in Court. The subpoeneas does not sustain this finding of fact, but does show that they were issued and placed in the hands of the law for service which presents due diligence on the part of petitioner. The subpoena of L. T. Huff has the return entered thereon "that he had been dead about a year." In petitioner's motion for a new trial on grounds of newly discovered evidence he alleges that this return is false and con-

stitutes a fraud which has not been controverted by the complainant. Petitioner argues that the Court within its discretion should have granted a new trial on the grounds of newly discovered evidence.

Petitioner recognizes the principle of law set forth in DAVIS VS. YELLOW CAB Co. 220 F 2d 790 "In state and Federal Courts alike, new trials on the grounds of newly discovered evidence may not be granted unless facts discovered will probably change results and not be merely cumulative or impeaching." Further, as the Court stated in MACHINERY CORP. VS. ADAMS MFG CO. 135 F 2d 617 "to secure a re-hearing on newly discovered evidence it must appear that party exercised due diligence at all times in effort to secure such evidence and that such evidence is of such weight as to necessitate a different conclusion.

Petitioner asserts that the returns on the subpoena of L. T. Huff, United States Secret Service Agent is a fraud and that this within itself warrants the issuance of a writ of certiorari, and the relief sought.

That he recognizes and directs the Court's attention to the principle of law set forth in the case of ROCHIN VS. PEOPLE OF CALIFORNIA 342 U.S. 165 wherein the Court stated: "Due process of law is a summarized constitutional guarantee of respect for those personal immunities which are so rooted in the traditions and conscience of our people as to be ranked fundamental or are implicit in the concept of ordered liberty." Also in the case of U.S. Ex Rel Montgomery Vs. Ragen D.C. Ill. 1946, 86 F Supp 382 the Court stated: "Due process of law identifies itself with due course of justice and means not only the due conviction and punishment or the due acquittal and discharge of an accused person as justice may require but it also means the due course of proceedings in the administration of justice."

Petitioner argues that to deny him a new trial on the grounds of newly discovered evidence would violate the spirit and

meaning of the due process of law clauses of Admendment XIV Sec I of the United States Constitution, Amendment V and Amendment VI of the U.S. Constitution as heretofore set forth herein.

In the trial of this cause complainant introduced into evifence a considerable amount of evidence that he had cheated and defrauded witness Tart out of a considerable sum of money. That there were no charges of this in the original complaint and petitioner was not in position to rebut this accusation. That after the trial he located a general release signed by witness Tart as will be seen by his affidavit presented in the record proper. Can it be said that such procedure constitutes a constitutional respect for those personal rights which are ranked as fundamental in the concept of ordered liberty.

Petitioner argues that if the Secret Service Agent L. T. Huff is dead as indicated on the subponea then why don't the Officials of the U.S. Treasury Department and/or the United States Department of Justice advise the Court and the petitioner when he died, where he died and where he was buried. That since this witness testified September 1964 in the Federal Court In Re contempt of Court proceedings against the petitioner his presence and whereabouts will not be told by the Government. Can it be said that this kind of procedure is in accordance with the spirit and meaning of the due process clauses of the United States Constitution and Amendment VI requiring the compulsory attendance of witnesses on behalf of the accused?

Petitioner argues that he is entitled to the appearance & testimony of Agent L. T. Huff, Agent Vernon Spicer and Agent Tarlton. That it is not within the meaning and spirit of the various clauses of the U.S. Constitution presented herewith that a lawyer's license be revoked without administering a reasonable opportunity for him to present his evidence. To permit otherwise is the eradication of ordered liberty and the sustaining of judicial hypocrisy.

Petitioner argues that the State Courts have decided federal questions in this cause of substantial substance in a way not in accord with the applicable decisions of this Court. That the North Carolina Court of Appeals and the North Carolina Supreme Court and the trial Court have so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's power of supervision and direction.

Applying the principles of law set forth herein to the facts and circumstances of the instant case petitioner submits that a Writ of Certiorari is in order.

WHEREFORE: Petitioner prays that a Writ of Certiorari be issued to the Supreme Court of North Carolina, the North Carolina Court of Appeals and that the opinions and judgments of Johnston County Superior Court, the North Carolina Court of Appeals and the N.C. Supreme Court be reviewed and reversed.

Respectfully submitted

Dated at Raleigh, North Carolina

February 15, 1970

John W. Hinsdale
Attorney at law for Petitioner
808 Lawyers Building
Raleigh, North Carolina

APPENDIX

JUDGMENT OF THE TRIAL COURT, MARTIN, J., OCTOBER 20, 1967

This cause coming on to be heard and being heard before his Honor, Robert M. Martin, Judge presiding, and a jury at the October 16th Civil Term of the Superior Court of Johnston County, and the jury having answered the issues submitted to them as follows:

1. Did the respondent, Elam Remuel Temple, on or about July 18, 1963, attempt to engage in the illegal traffic of counterfeit money, as alleged in the complaint?

Answer: Yes

2. Did the respondent, Elam Remuel Temple, on or about November 16, 1964, wilfully and fraudulently prepare or cause to be prepared false affidavits in connection with the purported or duplicate original Last Will and Testament of Nancy Williams, which the respondent knew to be false and erroneous, as alleged in the complaint?

Answer: Yes

3. Did the respondent, Elam Remuel Temple, wilfully and fraudulently procure or cause to be procured the signature of one Thomas Jones as a witness to a paper writing purporting to be a duplicate original Last Will and Testament of Nancy Williams subsequent to her death, as alleged in the complaint?

Answer: Yes

4. On or about November 16, 1964, did the respondent, Elam Remuel Temple, wilfully and fraudulently offer or cause to be offered false and erroneous affidavits to the clerk of the Superior Court of Johnston County in connection with the probate of the purported duplicate

original Last Will and Testament of Nancy Williams, as alleged in the complaint?

Answer: Yes

5. Did the respondent, Elam Remuel Temple, wilfully and fraudulently alter a note and deed of trust from one Nancy Williams to Dan Perry, Trustee, for the benefit of Elam Remuel Temple by wilfully and fraudulently changing the amount from $200.00 to $2200.00 without the knowledge and consent of Nancy Williams, as alleged in the complaint?

Answer: Yes

6. Did the respondent, Elam Remuel Temple, wilfully and fraudulently offer or cause to be offered to the clerk of the Superior Court of Johnston County a fraudulently altered note and deed of trust for recordation as shown in Book 629, page 19, in the office of the Register of Deeds of Johnston County, as alleged in the complaint?

Answer: Yes

The jury having answered each of the issues in the affirmative;

THEREFORE, it is ordered and adjudged that the respondent, Elam Remuel Temple be and he is hereby disbarred from the practice of law in the State of North Carolina.

FURTHERMORE, it is hereby ORDERED, ADJUDGED and DECREED that the respondent be taxed with the costs of court.

It is further ORDERED, ADJUDGED AND DECREED that a certified copy of this judgment be transmitted to the clerk of Supreme Court of North Carolina and to the clerk of the Court of Appeals of North Carolina; that a certified copy of this judgment be transmitted to the clerk of Superior Court of Johnston County and a certified copy of this judg-

ment be transmitted to the office of the North Carolina State Bar.

This, the 20th day of October, 1967.

ROBERT M. MARTIN
Judge Presiding

To the signing of the foregoing judgment respondent excepts and gives notice of appeal to the Court of Appeals of North Carolina. Further notice waived. This 20th day of Oct. 1967.

s/ ROBERT M. MARTIN

OPINION OF NORTH CAROLINA COURT OF APPEALS No. 68SC93, Spring Session 1968, Filed 8-14-68.

Appeal by respondent from MARTIN, S. J. October 1967 Session Johnston Superior Court.

Complainant instituted this action pursuant to Chapter 84 of the General Statutes. The complaint is briefly summarized as follows: (Numbers ours)

(1) Respondent is and was at all times referred to in the complaint an attorney at law licensed to practice in North Carolina and is and was subject to the rules and regulations of complainant and the laws of North Carolina.

(2) While acting as an attorney and as an individual, respondent did unlawfully and wilfully (a) engage in conduct involving willful deceit and fraud. (b) engage in activity showing professional unfitness, and (c) did practice chicanery and fraud upon the courts of this State.

(3) AS A FIRST CAUSE OF ACTION: On or about 18 July 1963, respondent attempted to engage in illegal traffic of counterfiet money.

(4) AS A SECOND CAUSE OF ACTION: In Novem-

ber, 1964, respondent prepared or caused to be prepared certain affidavits and engaged in other activities in connection with the estate of one Nancy Williams, all of which were false, erroneous or untrue.

(5) AS A THIRD CAUSE OF ACTION: In the summer of 1964, respondent altered a promissory note and deed of trust which Nancy Williams had executed in his favor in January, 1964, by increasing the amount of said note and deed of trust from Two Hundred Dollars to Twenty-two Hundred Dollars, without the knowledge and consent of the said Nancy Williams, and caused said altered deed of trust to be recorded in the Jonston County Registry.

Respondent filed answer denying the material allegations of the complaint and requested a trial by jury. Thereafter, on 13 January 1967, he filed a demurrer and motion to dismiss which was heard and denied by Clark, J., on 23 January 1967. On 28 January 1967, respondent filed a motion to strike and a plea in bar and plea of statute of limitations; by order dated 27 February 1967, Mallard, J., denied the motion to strike.

Issues were submitted to and answered by the jury as follows:

"1. Did the respondent, Elam Reamuel Temple on or about July 18, 1963, attempt to engage in the illegal traffic of counterfeit money, as alleged in the complaint?

Answer: Yes.

"2. Did the respondent, Elam Reamuel Temple, on or about November 16, 1964, willfully and fradulently prepare or cause to be prepared false affidavits in connection with the purported or duplicate original Last Will and Testament of Nancy Williams, which the respondent knew to be false and erroneous, as alleged in the complaint?

Answer: Yes.

"3. Did the respondent, Elam Reamuel Temple, willfully and fraudulently procure or cause to be procured the signature of one Thomas Jones as a witness to a paper writing purporting to be a duplicate original Last Will and Testament of Nancy Williams subsequent to her death, as alleged in the complaint?

Answer: Yes.

"4. On or about November 16, 1964, did the respondent, Elam Reamuel Temple, willfully and fraudulently offer or cause to be offered false and erroneous affidavits to the clerk of the Superior Court of Johnston County in connection with the probate of the purported duplicate original Last Will and Testament of Nancy Williams, as alleged in the complaint?

Answer: Yes.

"5. Did the respondent, Elam Reamuel Temple, willfully and fraudulently alter a note and deed of trust from one Nancy Williams to Dan Perry, Trustee, for the benefit of Elam Reamuel Temple, by willfully and fraudulently changing the amount from $200.00 to $2200.00 without the knowledge and consent of Nancy Williams, as alleged in the complaint?

Answer: Yes.

"6. Did the respondent, Elam Reamuel Temple, willfully and fraudulently offer or cause to be offered to the Clerk of the Superior Court of Johnston County a fradulently altered note and deed of trust for recordation as shown in Book 629, page 19, in the Office of the Register of Deeds of Johnston County, as alleged in the complaint?

Answer: Yes.

From judgment entered on the verdict disbarring respondent from the practice of law in the State of North Carolina and taxing him with the costs of court, respondent appealed.

ROBERT B. MORGAN AND B. E. JAMES, ATTORNEYS FOR COMPLAINANT APPELLEE.

ELAM REAMUEL TEMPLE, ATTORNEY PRO SE.

BRITT, J. G.S. 84-28 deals with discipline and disbarment of attorneys. It authorizes the council of the North Carolina State Bar or any committee of its members appointed for that purpose, or designated by the Supreme Court, to have jurisdiction to hear and determine complaints, charges of malpractice, corrupt or unprofessional conduct, or other allegations made against any member of the North Carolina State Bar. Subsection (3) provides that the processes of the courts may be invoked to carry out the purposes of Chapter 84 but provides that the person charged may demand a trial by jury.

In his appeal to this court, respondent made numerous assignments of error to the trial proceedings. We will discuss those we deem pertinent to the appeal.

He contends that the trial court committed error in overruling his demurrer and motion to dismiss, his motion to strike, and his plea of the statute of limitations.

It is well established that upon demurrer a pleading will be liberally construed with a view to substantial justice between the parties, giving the pleader the benefit of every reasonable intendment in his favor. A demurrer will not be sustained unless the pleading is wholly insufficient or fatally defective. A demurrer admits, for the purpose of testing the sufficiency of the pleading, the truth of factual averments well stated, and relevant inferences of fact reasonably deducible thereform. 6 Strong, N. C. Index 2d, Pleadings, Sec. 19, p 325, citing numerous authorities. The allegations in the complaint in this action were amply sufficient to survive demurrer.

Respondent's demurrer and motion to dismiss were based on the contention that the facts as alleged do not constitute a cause of action. In BOWLING v BURTON, 101 NC 176, 7 SE 701, our Supreme Court held that a defective statement of a

cause of action is ground for demurrer but not for a motion to dismiss the action. Respondent was not entitled to have his motion to dismiss granted.

Respondent's motion to strike, denied before the action came on for trial, was made after answer was filed. Granting or denial of the motion then became a matter of discretion for the court, and Judge Mallard properly exercised his discretion in denying the motion. BROWN v BALL, 226 NC 732, 40 SE 2d 412. Furthermore, we find that the motion to strike was without merit, and respondent's assignment of error relating thereto is overruled.

The plea of the statute of limitations is not available to respondent in this action. In 7 Am Jur 2d, Attorneys, Sec. 62, p 86; Annotation, 45 A.L.R. 1110, it is said:

> "Disciplinary proceedings are not barred by the general statute of limitations. Nor is a disciplinary proceeding barred because it is grounded on acts that also constitute a crime that cannot be prosecuted in a criminal action because of limitations."

Respondent contends that the trial court erred in permitting certain witnesses to testify as to transactions and conversations between the respondent and third parties who were deceased at the time of the trial, contending that the evidence was violative of GS 8-51. We hold that said testimony was not violative of the statute and that the assignments of error relating thereto are without merit.

Assignments of error were also made to the trial court's granting the motion of the U. S. Government to quash the subpoenas of respondent directed to U. S. Secret Service Agents Spicer and Tarlton. Certain rules and regulations are prescribed by the Federal Government for the summoning of Secret Service Agents; the record discloses that respondent failed to comply with the regulations, therefore, we hold that his assignments of error relating thereto are without merit.

Respondent assigns as error the failure of the trial court to

grant his motion for judgment as of nonsuit made at the close of complainant's evidence and renewed at the conclusion of all the evidence. We hold that the evidence was more than sufficent to support complainant's complaint and to withstand motions for nonsuit.

On its first cause of action, complainant introduced evidence showing that respondent approached one Jesse Noah Williams and tried to get him to work with respondent in purchasing counterfeit money. Pursuant to his conversation with Williams, the evidence disclosed that respondent met with Secret Service Agent Huff, posing as Williams' brother-in-law, and attempted to consummate a transaction involving counterfeit money. The testimony also showed that in June or July of 1963, respondent contacted one Ralph C. Winstead, a convicted counterfeiter, and attempted to purchase counterfeit money from him.

On its second cause of action, complainant introduced several witnesses who gave detailed testimony in support of each allegation of the second cause of action.

As to the third cause of action, complainant presented testimony of one Moses Tart who testified that he saw respondent alter the note and deed of trust executed by Nancy Williams by changing the amount of the indebtedness stated on the note and deed of trust from $200.00 to $2200.00, and that respondent told Tart at the time that no one would know the difference. The deed of trust was thereafter recorded in the Johnston County Registry.

We have stated only a small portion of the voluminous testimony presented by the complainant. The trial court very properly overruled the motions to nonsuit.

Respondent noted 43 exceptions to the trial court's charge; in fact, he excepted to most of the charge and then by exception No. 70, "(d)efendant objects and excepts to the charge of the court as a whole." Although respondent's numerous exceptions to the charge probably amount to a broadside excep-

tion, we have given careful consideration to the charge and each objection made by the respondent. We do not deem it necessary to discuss the numerous exceptions and assignments of error related to the charge but hold that the charge was without prejudicial error.

We have considered each of respondent's assignments of error, and find them without merit. They are all overruled.

The respondent had a fair trial in his home county where a jury of his peers answered appropriate issues against him. The judgment of the Superior Court predicated thereon is Affirmed.

CAMPBELL and MORRIS, JJ., concur.

OPINION OF NORTH CAROLINA COURT OF APPEALS, No. 68SC93, Fall Session 1968, Filed 11-13-68.

Appeal by respondent from *Martin (Robert), S.J.*, October 1967 Session, JOHNSTON Superior Court.

The facts of this case are set out in *State Bar v Temple*, 2 N.C. App. 91. In apt time, respondent filed a petition to rehear. Because a motion of complainant suggesting a diminution of the record had not come to the attention of the Court, although properly filed and with proper notice to respondent, this Court granted the petition to rehear and directed oral arguments under Rule 44(e), Rules of Practice in the Court of Appeals of North Carolina.

ROBERT B. MORGAN and B. E. JAMES for complainant.

ELAM REAMUEL TEMPLE, Attorney *pro se*, and JOHN W. HINSDALE for respondent appellant.

MORRIS, J. Respondent's appeal in this matter was duly docketed and calendared for hearing on 12 June 1968. At that time the respondent did not appear to argue. The matter was calendared for rehearing on 23 October 1968. Again respondent did not appear to argue, nor did counsel who had signed his

brief appear to argue, although respondent's petition to rehear specifically requested that the Court direct oral arguments.

We have carefully examined the brief filed by respondent on rehearing and have reexamined the record. All assignments of error were considered and disposed of in the opinion of Britt, J., in *State Bar v. Temple*, 2 N.C. App. 91, and no useful purpose would be served by a second opinion discussing the assignments of error and reaching the same conclusion. We, therefore, deem it sufficient to say that each of respondent's assignments of error has been considered and found to be without merit.

Affirmed.

CAMPBELL and BRITT, JJ., concur.

ORDER OF THE SUPREME COURT OF NORTH CAROLINA ALLOWING MOTION TO DISMISS.

Motion to dismiss appeal is filed with the following order:
"Allowed by order of the court in conference this the 21st day of January 1969. Huskins, J., For the Court."

NOTICE OF APPEAL BY RESPONDENT TO SUPREME COURT OF NORTH CAROLINA.

Notice of appeal by respondent from MARTIN, Robert, S.J. October 1967 Session, Johnston Superior Court and Honorables BRITT, MORRIS and CAMPBELL, North Carolina Court of Appeals, Fall Session 1968:

That this appeal is taken pursuant to and under the provisions of Rules two and three of the Supplementary Rules of the Court of Appeals for North Carolina and pursuant to and under the Rules, (two and three) of the Supplementary Rules of the Supreme Court of North Carolina and North Carolina General Statute 7A-30.

JUDGMENT IN SUPERIOR COURT May 5, 1969

This cause came on before the undersigned Judge presiding at the March 31 Session, Superior Court of Johnston County, and was heard upon the motion of the respondent for a new trial on grounds of new evidence. At said hearing the respondent offered evidence which he contends constitutes newly discovered evidence.

At the time of the hearing on April 8, 1969, after hearing argument of counsel on the agreement of both parties, it was agreed that each side could have until April 12, 1969, to file additional affidavits, and that each side could have until April 16, 1969, to file memoranda of law or briefs in support of their position. It was further agreed, as appears in the record, that the undersigned could thereafter without further hearing on this matter render judgment out of term and out of the district.

On the evidence offered at the hearing and the briefs, and after argument of counsel, the court finds that the alleged newly discovered evidence fails to meet the requirements for the calendaring of a new trial, in that it is made to appear to the court that the evidence offered on behalf of the respondent involves witnesses who were subpoenaed at the original trial of this matter in October of 1967; and further that the alleged newly discovered evidence would tend only to be cumulative or tend only to discredit former witnesses; and that said evidence is not of such a nature as to show on another trial a different result would probably be reached.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that respondent's motion for a new trial on the grounds of newly discovered evidence be and the same is hereby denied.

This the 5th day of May, 1969.

HAMILTON H. HOBGOOD
Judge Presiding

JUDGMENT IN SUPERIOR COURT May 5, 1969

This cause coming on to be heard and being heard before the undersigned judge presiding at the March 31, 1969, Session of the Superior Court of Johnston County,

AND IT APPEARING To the court that:

I. The Honorable Robert M. Martin, Judge presiding at the October, 1967, Civil Session of the Superior Court of Johnston County, signed a judgment in the above entitled action as will appear in the record of this cause;

II. The respondent excepted said judgment and perfected an appeal to the Court of Appeals of North Carolina;

III. Upon the hearing of said appeal the Court of Appeals of North Carolina affirmed the judgment of the Superior Court;

IV. The respondent petitioned and was granted a rehearing before the Court of Appeals of North Carolina;

V. Upon the hearing of said rehearing the Court of Appeals of North Carolina affirmed its previous opinion and affirmed the judgment of the Superior Court;

VI. The respondent filed an appeal to the North Carolina Supreme Court, and said appeal was dismissed by the Supreme Court of North Carolina on January 21, 1969;

VII. Thereafter respondent filed a motion for a new trial on the grounds of new evidence in the Supreme Court of North Carolina, and the Supreme Court refused to take action;

VIII. Thereafter the Court of Appeals of North Carolina duly certified its opinion and judgment in this cause to the Clerk Superior Court of Johnston County, and same is now on file in said clerk's office, having been certified down on January 29, 1969.

AND IT FURTHER APPEARING TO THE COURT that when this matter came on to be heard at the March 31 Session of the Superior Court on April 8, 1969, both parties agreed that

judgment could be entered in this matter out of term and out of the district by the undersigned.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that in accordance with the opinion of the Court of Appeals of North Carolina, the said judgment of this court entered by the Honorable Robert M. Martin, Judge presiding at the October 1967 Session of this court be, and the same is hereby, affirmed for execution of sentence.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the disbarment from the practice of law of the respondent Elam Remuel Temple as provided in said judgment shall be in full force and effect from the date that the opinion of the Court of Appeals of North Carolina was certified to the office of the clerk of the Superior Court of Johnston County.

This the 5th day of May, 1969.

HAMILTON H. HOBGOOD
Judge Presiding

OPINION OF NORTH CAROLINA COURT OF APPEALS No. 6911SC489, Fall Session 1969, Filed 10-22-69.

Appeal from Hobgood, J., 31 March 1969 Session of Johnston County Superior Court.

This is an appeal by the respondent from an order and a judgment entered on 5 May 1969. The order denied respondent's motion for a new trial on the grounds of newly discovered evidence. The judgment affirmed a prior judgment disbarring respondent from the practice of law and ordered that judgment into effect from 29 January 1969, the date an opinion of this court affirming the judgment of disbarment was certified to the Clerk of Superior Court of Johnston County.

Robert B. Morgan for plaintiff appellee. E. R. Temple *in propria persona.*

GRAHAM, J. Judgment disbarring the respondent from the practice of law was entered 24 October 1967 after a jury had found him guilty of six separate acts of fraudulent and unprofessional conduct. The respondent's appeal was docketed and calendared but he did not appear in this court to argue. His appeal was nevertheless given thorough consideration and all assignments of error were disposed of in the opinion of Britt, J. State Bar v. Temple, 2 N.C. App. 91, 162 S.E. 2d 649. Thereafter the respondent petitioned for a rehearing, specifically requesting that oral arguments be directed. His petition was granted and the matter was duly docketed and calendared for hearing. Again the respondent did not appear to argue, nor did the attorney who signed his brief. The respondent's assignments of error were again found to be without merit. State Bar v. Temple, 3 N.C. App. 73, 164 S.E. 2d 13. On 3 December 1968 the respondent filed notice of appeal in the Supreme Court of North Carolina, alleging he was appealing as a matter of right. The appeal was dismissed by the Supreme Court on 21 January 1969. On 12 February 1969, the respondent filed a motion for a new trial in the Supreme Court on the grounds of newly discovered evidence. Upon being advised that the matter was not then pending in the Supreme Court, the respondent filed a similar motion in the Superior Court of Johnston County. The order denying that motion and the entering of a formal judgment of execution are the subject of this appeal.

The order and judgment appealed from are dated 5 May 1969. To properly effect this appeal it was necessary that the respondent docket the record on appeal in this court within ninety days after 5 May 1969. Rule 5, Rules of Practice in the Court of Appeals of North Carolina. The ninetieth day was on Sunday, 3 August 1969, so the respondent had through Monday, 4 August 1969, to docket the appeal. However, the appeal was not docketed in this court until 26 August 1969. No order appears in the record before us extending the time within which the appeal could be docketed and in accordance with the practice of this court and pursuant to Rule 48, Rules of Prac-

tice, *supra*, this appeal is dismissed *ex mero motu* for failure to docket within the time prescribed by Rule 5.

In dismissing this appeal we nevertheless note that the respondent's motion for a new trial was addressed to the sound discretion of the trial court. The decision of the trial court is not reviewable absent and abuse of discretion and no such abuse has been shown. State v. Morrov, 264 N.C. 77, 140 S.E. 2d 767; Allen v. Gooding, 174 N.C. 271, 93 S.E. 740. The defendant's motion and affidavits fall far short of establishing the necessary prerequisites for granting a new trail on the basis of newly discovered evidence. State v. Casey, 201 N.C. 620, 161 S.E. 81.

Appeal Dismissed.

CAMPBELL and PARKER, JJ., concur.

PETITION FOR CERTIORARI to review decision of the Court of Appeals is filed with the following Order:

"DENIED by order of the Court in Conference this the 2 day of December, 1969.

HUSKINS, J.
For the Court"

MOTION, NOTICE, REQUEST (Filed in Supreme Court 12-29-69).

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES (Filed 12-27-69).

Notice is hereby given that Elam Reamuel Temple, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment entered by the Supreme Court of North Carolina denying appellant petition for a writ of certiorari entered on the —— day of December, 1969, and judgments of N. C. Court of Appeals entered on the 14 August. 1968, and judgment entered October 1969, Judg-

ment November 13, 1968. The Clerk of the Supreme Court of North Carolina will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

The record and statement of case on appeal in the Court of Appeals of N. C.
All judgments of the Court of Appeals for North Carolina in the cause.
All judgments of the Supreme Court of North Carolina entered in the cause.
The petition and answer for writ of certiorari filed in the Supreme Court of North Carolina.
The order denying the petition for writ of certiorari entered by the Supreme Court of North Carolina.

The following questions are presented by this appeal:

(a) That the Supreme Court of North Carolina erred by denying appellant a new trial in this cause on the grounds of newly discovered evidence.

(b) That the appellant has been tried and found guilty of certain issues without having been given reasonable opportunity to present evidence in his behalf.

OFFICE OF THE ATTORNEY GENERAL
WASHINGTON, D. C.
October 8, 1964

TITLE 28 JUDICIAL ADMINISTRATION
CHAPTER I., Department of Justice
Order No. 324-64
Part 16 production or disclosure of material or information.

By virtue of the authority vested in me by the laws of the U. S. including section 161 of the Revised Statutes (5 U.S.C. 22) section 2 of Reorganization Plan No. 2 of 1950 (64 Stat. 1261) Part 16 of Title 28 of the Code of Federal Regulations is hereby amended to read as follows:

Sec. 16.1: "No officer or employee of the Department of Justice shall produce or disclose in response to subpoena, ordered or other demand (hereinafter in this part referred to as demand) of a court or other authority any information or material contained in the files of the Department of Justice or any other information or material acquired as a part of the performance of his official duties or because of his official status, without the prior approval of the Attorney General. For the purpose of this part, the term officer or employee of the Department of Justice, includes all officers and employees of the U. S. appointed by or subject to the supervision, jurisdiction or control of the Attorney General of the U. S., including U. S. Attorneys, U. S. Marshalls and members of the staff of those officials."

28 U.S.C.A. 1257 (1) (2) (3)

Final Judgments or decrees rendered by the highest Court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:

(3) By writ of certiorari where the validity of a treaty or statute of the United States is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held, or authority exercised under the United States June 25, 1948.

AMENDMENT XIV Sec I portion which reads:

"Nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny any person within its jurisdiction the equal protection of the law."

AMENDMENT V United States Constitution portion thereof which reads: "nor be deprived of life, liberty or property without due process of law."

AMENDMENT VI of United States Constitution portion

thereof which reads: In all criminal prosecutions the accused shall have the right to a speedy and public trial; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR.

N.C.G.S. 84-28 (d) (f)

(D) Conduct involving willful deceit or fraud or any other unprofessional conduct.

(f) The violation of any of the canons of ethics which have been adopted and promulgated by the Counsel of the North Carolina State Bar.

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In The

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1238

ELAM REAMUEL TEMPLE

Petitioner

Vs.

THE NORTH CAROLINA STATE BAR

Respondent

BRIEF OF RESPONDENT THE NORTH CAROLINA STATE BAR IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

The Opinion of the Supreme Court of North Carolina now before this Court is reported in 275 N.C. 682 and the Opinion of the Court of Appeals of North Carolina is reported in 6 N.C. App. 437.

JURISDICTION

The Judgment of the Supreme Court of North Carolina was entered on December 2, 1969. The jurisdiction of this Court is invoked under 28 U.S. Code, Section 1257 (3).

QUESTIONS PRESENTED

I. WAS THE PETITIONER DEPRIVED OF HIS CONSTITUTIONAL RIGHTS BY THE DELAY IN THE BRINGING OF THE ACTION BY RESPONDENT?

II. DID THE TRIAL COURT ERR BY PREVENTING PETITIONER FROM PRESENTING HIS EVIDENCE AT THE TRIAL OF THE CAUSE IN OCTOBER 1967?

III. WAS THE PETITIONER DEPRIVED OF HIS CONSTITUTIONAL RIGHTS BY THE DENIAL OF HIS MOTION FOR A NEW TRIAL ON THE GROUNDS OF NEWLY DISCOVERED EVIDENCE?

The Petitioner attempts to bring this case under the provisions of the due process privileges or immunities, or equal protection clause of the XIV Amendment to the Constitution of the United States. He likewise alleges a violation of the V and VI Amendments of the United States Constitution.

STATEMENT OF FACTS

Petitioner in this Court was the "Respondent" in the Supreme Court of North Carolina and in all tribunals below the State Supreme Court. Respondent herein, The North Carolina Bar, was "Complainant" in the Supreme Court of North Carolina and in all tribunals below the State Supreme Court. Petitioner Elam Reamuel Temple is referred to in this brief of The North Carolina State Bar as "Petitioner" while The North Carolina State Bar is referred to as "Respondent". The record before the State Supreme Court is on file in this Court and references are made as follows: "(R.p. ... .)"

This proceeding began with the issuance of a summons on November 13, 1966 and the filing of a Complaint by the Respondent pursuant to Chapter 84 of the General Statutes of North Carolina. The Complaint is summarized as follows:

> Respondent instituted this action pursuant to Chapter 84 of the General Statutes. The complaint is briefly summarized as follows:
>
> 1. Petitioner is, and was at all times referred to in the complaint, an attorney at law licensed to practice in North Carolina and is, and was, subject to the rules and regulations of Respondent and the laws of North Carolina.
>
> 2. While acting as an attorney and as an individual Petitioner did unlawfully and wilfully (a) engage in con-

duct involving wilful deceit and fraud, (b) engage in activity showing professional unfitness, and (c) did practice chicanery and fraud upon the courts of this State.

3. AS A FIRST CAUSE OF ACTION: On or about 18 July 1963, Petitioner attempted to engage in illegal traffic of counterfeit money.

4. AS A SECOND CAUSE OF ACTION: In November, 1964, Petitioner prepared or caused to be prepared certain affidavits and engaged in other activities in connection with the estate of one Nancy Williams, all of which were false, erroneous or untrue.

5. AS A THIRD CAUSE OF ACTION: In the summer of 1964, Petitioner altered a promissory note and deed of trust which Nancy Williams had executed in his favor in January, 1964, by increasing the amount of said note and deed of trust from Two Hundred Dollars to Twenty-two Hundred Dollars, without the knowledge and consent of the said Nancy Williams, and caused such altered deed of trust to be recorded in the Johnston County Registry.

Petitioner filed answer denying the material allegations of the complaint and requested a trial by jury. Thereafter, on 13 January 1967, he filed a demurrer and motion to dismiss, which was heard and denied by Clark, J., on 23 January 1967. On 28 January 1967, Petitioner filed a motion to strike and a plea in bar and plea of statute of limitations; by order dated 27 February 1967, Mallard, J., denied the motion to strike.

Issues were submitted to and answered by the jury as follows:

1. Did the Petitioner, Elam Reamuel Temple, on or about July 18, 1963, attempt to engage in the illegal traffic of counterfeit money, as alleged in the complaint?

ANSWER: Yes.

2. Did the Petitioner, Elam Reamuel Temple, on or

about November 16, 1964, wilfully and fraudulently prepare or cause to be prepared false affidavits in connection with the purported or duplicate original Last Will and Testament of Nancy Williams, which the Petitioner knew to be false and erroneous, as alleged in the complaint?

ANSWER: Yes.

3. Did the Petitioner, Elam Reamuel Temple, wilfully and fraudulently procure or cause to be procured the signature of one Thomas Jones as a witness to a paper writing purporting to be a duplicate original Last Will and Testament of Nancy Williams subsequent to her death, as alleged in the complaint?

ANSWER: Yes.

4. On or about November 16, 1964, did the Petitioner, Elam Reamuel Temple, wilfully and fraudulently offer or cause to be offered false and erroneous affidavits to the clerk of the Superior Court of Johnston County in connection with the probate of the purported duplicate original Last Will and Testament of Nancy Williams, as alleged in the complaint?

ANSWER: Yes.

5. Did the Petitioner, Elam Reamuel Temple, wilfully and fraudulently alter a note and deed of trust from one Nancy Williams to Dan Perry, Trustee, for the benefit of Elam Reamuel Temple, by wilfully and fraudulently changing the amount of $200.00 to $2200.00 without the knowledge and consent of Nancy Williams, as alleged in the complaint?

ANSWER: Yes.

6. Did the Petitioner, Elam Reamuel Temple, wilfully and fraudulently offer or cause to be offered to the clerk of the Superior Court of Johnston County a fraudulently altered note and deed of trust for recordation as shown

in Book 629, page 19, in the office of the Register of Deeds of Johnston County, as alleged in the complaint?

ANSWER: Yes.

From judgment entered on the verdict disbarring Petitioner from the practice of law in the State of North Carolina and taxing him with the costs of court, Petitioner appealed.

There were 73 exceptions taken by the Petitioner in his original case on appeal before the Court of Appeals, and 74 assignments of error. These assignments of error were grouped into 47 assignments of error. Petitioner presented to the Court of Appeals 21 questions for consideration. These questions basically involved:

1. Did the trial court err by denying Petitioner's demurrer and motion to dismiss, motion to strike, and plea of statute of limitations?

2. Did the trial court err in overruling Petitioner's motion for judgment of nonsuit?

3. Did the trial court err in admitting testimony of Williams and permitting him to make use of handwritten notes?

4. Did the trial court err in admitting certain evidence of Witnesses Williams, Norton, Thomas Jones, and Eddie Jones, over Petitioner's objection?

5. Did the trial court err in its charge to the jury?

Petitioner's appeal to the Court of Appeals was duly docketed and calendared for hearing on 12 June 1968. At that time, Petitioner did not appear to argue. At that time all assignments of error were considered and disposed of in the opinion of Britt, J., in State Bar v. Temple, 2 NC App. 91, 162 S.E. 2d 649, affirming the trial court.

Upon petition of Petitioner, the matter was calendared

for rehearing before the Court of Appeals on 23 October 1968. Again, Petitioner did not appear to argue, nor did counsel who had signed his brief appear to argue, although Petitioner's petition to rehear specifically requested that the court direct oral arguments. On 13 November, 1968, the judgment of the Court of Appeals in State Bar v. Temple, 2 NC App 91, 162 SE 2d 649 was affirmed in the opinion of Morris, J., State Bar v. Temple, 3 NC App 73, 164 SE 2d 13.

On 3 December, 1968, Petitioner filed notice of appeal in the Supreme Court of North Carolina from judgment of the trial court and from the judgment of the Court of Appeals of North Carolina, alleging he was appealing as a matter of right. On 6 December, 1968, the Respondent filed a motion to dismiss Petitioner's appeal.

The Supreme Court of North Carolina dismissed Petitioner's appeal on January 21, 1969, and the same was certified to the Court of Appeals of North Carolina on January 23, 1969. The Court of Appeals of North Carolina certified to the Superior Court of Johnston County on January 29, 1969, the judgment of that Court in denying the Petitioner any relief. On February 12, 1969, the Petitioner filed motion for a new trial on the grounds of newly discovered evidence in the Supreme Court of North Carolina. On February 13, 1969, the Petitioner was advised by the clerk of the Supreme Court that the case was not pending in the Supreme Court; that it had been certified to the North Carolina Court of Appeals. On February 27, 1969, the Petitioner filed a motion for a new trial on the grounds of new evidence in the Superior Court of Johnston County. The Respondent filed a reply in opposition to the motion. This motion came on for hearing before the Honorable Hamilton H. Hobgood at the March 31, 1969, session of the Superior Court of Johnston County. At this hearing the Petitioner was represented by counsel and evidence was offered which he contended constituted newly dis-

covered evidence. This motion was denied by judgment of May 5, 1969, from which this appeal was taken.

At the hearing of the March 31, 1969 session, the Respondent tendered to the court a judgment putting into full force and effect the original judgment of Judge Martin. The Honorable Hamilton H. Hobgood entered this judgment on May 5, 1969, from which this appeal was taken.

The order and judgment appealed from are dated 5 May 1969, and to comply with Rule 5 of the Rules of Practice in the Court of Appeals of North Carolina it was necessary that the record on appeal be docketed within 90 days after 5 May, 1969. This meant that the appeal had to be docketed not later than Monday, 4 August, 1969. There was no order extending the time within which the appeal could be docketed. The appeal was docketed August 26, 1969. The Court of Appeals on October 22, 1969, pursuant to Rule 48 of the Rules of Practice in the Court of Appeals of North Carolina, dismissed the appeal *ex mero motu* for failure to docket within the time prescribed by Rule 5.

But in dismissing the appeal the court ruled that there had been no abuse of discretion by the trial court in denying the motion for a new trial.

On November 18, 1969, the Petitioner filed petition for writ of certiorari to the North Carolina Court of Appeals to review its decision.

On December 2, 1969, petition for certiorari to review decision of the Court of Appeals was denied by the North Carolina Supreme Court in conference. From that decision, the Petitioner has filed in the Supreme Court of the United States this petition for a writ of certiorari to the Supreme Court of North Carolina.

For purpose of clarity, I am attaching in the Appendix in chronological order copies of the Judgments and Motions for New Trial and Orders.

ARGUMENT

I. WAS THE PETITIONER DEPRIVED OF HIS CONSTITUTIONAL RIGHTS BY THE DELAY IN THE BRINGING OF THE ACTION BY RESPONDENT?

The Petitioner alleges that there was an unreasonable delay in bringing the charge of attempting to engage in illegal traffic of counterfeit money in that the transaction took place in July 1963 and he was not served with summons until September 1966. As Petitioner states in his brief there is no statute of limitations for the bringing of disciplinary action. The authorities cited by the Petitioner are actually in support of the Respondent's position.

> "Disciplinary proceedings are not barred by the general statute of limitations. Nor is a disciplinary proceeding barred because it is grounded on acts that also constitute a crime that cannot be prosecuted in a criminal action because of limitations." 7 Am. Jur. 2d, ATTORNEYS, Sec. 62, p. 86; ANNO., STATUTE OF LIMITATIONS OF TIME FOR DISBARMENT PROCEEDINGS, 45 ALR 1110.

North Carolina has adopted this statement as controlling in disbarment proceedings. N. C. State Bar v. Temple, 2 N.C. App. 91, 162 S.E. 2d 649.

I would also like to point out that this delay was brought about through an unrelated case involving the Petitioner wherein the facts of this first cause of action were being litigated in a show cause in the U. S. Federal Courts, U. S. v. Temple, 349 F 2d 116 (1965), U. S. v. Temple, 372 F 2d 795. Certiorari denied March, 1967, 87 S. Ct. 1024, 386 U.S. 961, 18 L. Ed. 2d 110, and in the original record to the North Carolina Court of Appeals, at page 117, see Appendix, it shows that the Petitioner was given an additional 45 days to prepare and serve his case on appeal, based on his petition for the extension, on the grounds he had been confined to prison pursuant to an Order

of the U. S. District Court for the Eastern District of North Carolina. This Order was signed by Judge Harry E. Cannady of the Superior Court of North Carolina on the 21 day of December 1967. This prison sentence was the culmination of the above entitled action, U. S. v. Temple. The reasons for laches attaching is in those cases where the evidence had become stale. At the time this action was instituted all the witnesses were living and the evidence had not become stale because they had been litigated in the federal court for some 3 years.

The Respondent respectfully submits that our appellate courts in North Carolina have so held that the first cause of action was not barred by the statute of limitations.

II. DID THE TRIAL COURT ERR BY PREVENTING PETITIONER FROM PRESENTING HIS EVIDENCE AT THE TRIAL OF THE CAUSE IN OCTOBER 1967?

Petitioner's question number two is directed to the trial judge quashing the subpoena served on one Vernon D. Spicer who at that time was the special agent in charge of the U. S. Secret Service in Charlotte, North Carolina. He had been subpoenaed by the Petitioner. But the record on appeal from the original trial will show at page 46, see Appendix, that he was called as a witness on behalf of The North Carolina State Bar wherein the Assistant U. S. Attorney for the Eastern Division of North Carolina appeared on behalf of Mr. Spicer and objected and the Court allowed the U. S. Government motion to quash the subpoena.

The Petitioner is in error in his argument on page 10 of his petition alleging that it was quashed on the authority of the regulations of the U. S. Department of Justice. On pages 47, 48 and 49, see Appendix, it is specifically pointed out by the U. S. Attorney that Mr. Spicer was prohibited from testifying by virtue of federal regulations, Title 31, U. S. Code, Sec. 1.3, dealing with the Treasury Department.

The same is true as to Secret Service Agent Tarlton with the

exception that the Petitioner offered Tarlton as a witness. We respectfully submit that the actions of the Court was in accordance with the law as set forth in Boske v. Comingore, 177 U.S. 459; U. S. Ex rel. Touhy v. Ragen, 340 U.S. 462. Again it is respectfully submitted that the Petitioner is in error in his petition in stating that Justice Frankfurter was speaking for the Court in the Touhy case. He quotes Justice Frankfurter correctly but the quotation was in a concurring opinion. Justice Reed was speaking for the majority of the Court and the opinion held that the Touhy case was controlled by Boske v. Comingore, 177 U.S. 459. And further, that this case held that the F.B.I. Agent's refusal to produce the papers was proper for the reason that the subpoena duces tecum was requesting unlimited disclosure and the Agent at no time was questioned as to his willingness to submit the papers for determination as to their materiality.

The same thing happened in the case of State Bar v. Temple in that the Petitioner at no time followed the procedure for requesting the Secret Service Agent's appearance nor did he at any time specify as to what evidence in particular he wanted in order for the Court to make a determination.

Your Respondent respectfully submits the ruling was correct.

III. WAS THE PETITIONER DEPRIVED OF HIS CONSTITUTIONAL RIGHTS BY THE DENIAL OF HIS MOTION FOR A NEW TRIAL ON THE GROUNDS OF NEWLY DISCOVERED EVIDENCE?

Petitioner argues that to deny him a new trial on the grounds of newly discovered evidence would violate the due process of law clauses of Amendment XIV, Sec. I of the United States Constitution and Amendment V and VI of the United States Constitution.

The Respondent offers as argument the argument which he has presented to the Court of Appeals of North Carolina and to the North Carolina Supreme Court as authority and which is as follows.

The Respondent relied on STATE v CASEY, 201 N. C. 620, 161 S.E. 2d 81 as authority for the prerequisites for the granting of a new trial on the grounds of newly discovered evidence at the trial level, submitting that the Petitioner had failed to satisfy these requirements. Judge Hobgood so ruled.

Furthermore, the Respondent respectfully submitted that the motion was addressed to the discretion of the court and is not reviewable upon appeal unless discretion has been abused. ALLEN v. GOODING, 174 N.C. 271 (1917), 93 S.E. 2d 740 The Court of Appeals so ruled.

The Petitioner in his petition, under point No. 8, see Appendix, attempts to raise the constitutional question that the Court of Appeals did not discuss as to whether or not his rights guaranteed under the North Carolina Constitution, Art. 1, Sec. 17, and the U. S. Constitution, 14th Amendment, Sec. 1, and the U. S. Constitution, Amendment 5, had been violated. But the Petitioner in his argument before every tribunal has failed to point out in what particular he claims his rights have been violated and where he has not been tried by the "law of the land" and where he has not been given "due process of law".

It is respectfully submitted that the Petitioner has been accorded the standards set forth in Ex Parte Wall, 107 U.S. 265 at 289, 27 L. Ed. 552:

> "In all cases, that kind of procedure is due process of law which is suitable and proper to the nature of the case, and sanctioned by the established customs and usages of the courts. 'Perhaps no definition', says Judge Cooley, 'is more often quoted than that given by Mr. Webster in the Dartmouth College case: "By the law of the land is most clearly intended the general law; a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society."'" Cooley's Const. Lim. 353.

"The question, what constitutes due process of law within the meaning of the Constitution, was much considered by this court in DAVIDSON v. NEW ORLEANS, 96 U.S. 97; and Mr. Justice Miller, speaking for the court, said: 'It is not possible to hold that a party has, without due process of law, been deprived of his property, when, as regards the issues affecting it, he has, by the laws of the State, a fair trial in a court of justice, according to the modes of proceeding applicable to such a case.' "

In seeking a new trial on the grounds of newly discovered evidence, the Petitioner uses the affidavits of the following individuals:

1. The affidavit of one Rowland Smith.
2. The affidavit of one Dan Perry.
3. The affidavit of one Rev. Frank A. Armstrong.
4. The affidavit of the Petitioner Elam Reamuel Temple.
5. The affidavie of one Ethel May Jones.
6. The affidavit of one Levi Jones.

The Petitioner alleges in his petition for writ of certiorari that the record proper shows that the subpoenas were issued for the witnesses, but does not show they were served. The Petitioner is not being candid with this Court. In Petitioner's argument to the North Carolina Court of Appeals in this case, he admitted on page 7, see Appendix, that Perry and "Jones" were served with subpoenas.

The Respondent respectfully asks this court to take judicial notice of the motion filed by the Petitioner on February 12, 1969, in the Supreme Court of North Carolina entitled Motion for a New Trial on the Grounds of New Evidence, of which the Petitioner was advised by the clerk of the Supreme Court that the above named case is not now pending in this Court. In this motion there is an affidavit of one Frank A. Armstrong, a portion of which is: "That I was under a subpoena to appear as a witness for E. R. Temple at the trial of this cause, but the attorney

representing E. R. Temple advised that my testimony was not necessary to win the case." In the affidavit of Rev. Frank A. Armstrong filed before the Superior Court in a similar motion for a new trial, the following is contained in the evidence: "That I was not available to testify for E. R. Temple upon the trial of this cause in the Superior Court."

In the same motion of February 12, 1969, see Appendix, in the Supreme Court of North Carolina, there is an affidavit of one Rowland Smith which contains the following: "When this matter was tried in the Superior Court I was under subpoena as a witness for E. R. Temple, but never did testify due to the fact that the attorney representing E. R. Temple advised that my testimony was not necessary." In Rowland Smith's affidavit filed with the motion for a new trial in the Superior Court, there is no mention of the fact that he had been subpoenaed.

The Appendix contains the appropriate Motions which the Petitioner filed in the State Courts.

In reviewing a disbarment of an attorney by a State Court, it is respectfully submitted that the following norms have been established by this Court to insure an attorney is accorded due process in a disciplinary proceeding.

"It is not for this Court, except within the narrow limits for review open to this Court, as recently canvassed in KONIGSBERG v. STATE BAR OF CALIFORNIA, 353 U.S. 252, 77 S. Ct. 722, and SCHWARE v. BOARD OF BAR EXAMINERS, 353 U.S. 232, 77 S. Ct. 752, to sit in judgment on Louisiana disbarments, and we are not in any event sitting in review of the Louisiana judgment. While a lawyer is admitted into a federal court by way of a state court, he is not automatically sent out of the federal court by the same route. The two judicial systems of courts, the state judicatures and the federal judiciary, have autonomous control over the conduct of their officers,

among whom, in the present context, lawyers are included. The court's control over a lawyer's professional life derives from his relation to the responsibilities of a court. The matter was compendiously put by Mr. Justice Cardozo, while Chief Judge of the New York Court of Appeals. '"Membership in the bar is a privilege burdened with conditions." (MATTER OF ROUSS,, 221 N.Y. 81, 84, 116 N.E. 782, 783). The appellant was received into that ancient fellowship for something more than private gain. He became an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice.' People ex rel. KARLIN v. CULKIN, 248 N.Y. 465, 470-471, 162 N.E. 487, 489, 60 A.L.R. 851. The power of disbarment is necessary for the protection of the public in order to strip a man of the implied representation by courts that a man who is allowed to hold himself out to practice before them in 'good s t a n d i n g' so to do." THEARD v. U.S., 354 U.S. 155, 77 S. Ct. 1274, at page 1276.

It has been the policy of this Court as set forth in SELLING v. RADFORD, 243 U.S. 46, 37 S. Ct. 377, to recognize the judgments of a State Court in this kind of proceeding if it is shown, from a consideration of the record, that the following conditions have been complied with.

1. That the State procedure provided for notice and opportunity to be heard.

2. That there was no infirmity of proof as to the facts found to have established the want of fair private and professional character as to give rise to a clear conviction on the part of the Court that it could, consistently with its duty, accept as final the conclusions on the subject; and

3. That there was no other grave reason existing which should convince the Court that to allow the natural consequences of the judgment to have their effect, it would

conflict with the duty which rests upon the Court not to disbar except upon the conviction that, under the principles of right and justice, the Court be constrained so to do.

CONCLUSION

In this proceeding the Petitioner received adequate notice of the charges against him and was granted an impartial opportunity to be heard by his peers in his own community. His rights—constitutional or statutory—have been jealously guarded to the end that the Petitioner was granted a fair trial. The rights of the Petitioner have not been violated and therefore, this petition for writ of certiorari should be denied.

Respectfully submitted,

ROBERT B. MORGAN,
Attorney General
State of North Carolina
Justice Building
Raleigh, North Carolina

B. E. JAMES,
Secretary-Treasurer
The North Carolina State Bar
Justice Building
Raleigh, North Carolina

COUNSEL FOR THE NORTH CAROLINA STATE BAR

NORTH CAROLINA
JOHNSTON COUNTY

IN THE SUPERIOR COURT
C.I.D. 8536
October 16, 1967 Civil Term

THE NORTH CAROLINA STATE BAR,
Complainant,

Vs.

ELAM REMUEL TEMPLE,
Attorney at Law,
Smithfield, Johnston County,
North Carolina,
Respondent,

JUDGMENT

This cause coming on to be heard and being heard before His Honor, Robert M. Martin, Judge Presiding, and a jury at the October 16th Civil Term of the Superior Court of Johnston County, and the jury having answered the issues submitted to them as follows:

1. Did the Respondent, Elam Remuel Temple, on or about July 18, 1963, attempt to engage in the illegal traffic of counterfeit money, as alleged in the Complaint?

Answer: Yes

2. Did the Respondent, Elam Remuel Temple, on or about November 16, 1964, willfully and fraudulently prepare or cause to be prepared false affidavits in connection with the purported or duplicate original Last Will and Testament of Nancy Williams, which the Respondent knew to be false and erroneous, as alleged in the Complaint?

Answer: Yes

3. Did the Respondent, Elam Remuel Temple, willfully

and fraudulently procure or cause to be procured the signature of one Thomas Jones as a witness to a paperwriting purporting to be a duplicate original Last Will and Testament of Nancy Williams subsequent to her death, as alleged in the Complaint?

Answer: Yes

4. On or about November 16, 1964, did the Respondent, Elam Remuel Temple, willfully and fradulently offer or cause to be offered false and erroneous affidavits to the Clerk of the Superior Court of Johnston County in connection with the probate of the purported duplicate original Last Will and Testament of Nancy Williams, as alleged in the Complaint?

Answer: Yes

5. Did the Respondent, Elam Remuel Temple, willfully and fraudulently alter a note and deed of trust from one Nancy Williams to Dan Perry, Trustee, for the benefit of Elam Remuel Temple by willfully and fraudulently changing the amount from $200.00 to $2200.00 without the knowledge and consent of Nancy Williams, as alleged in the Complaint?

Answer: Yes

6. Did the Respondent, Elam Remuel Temple, willfully and fraudulently offer or cause to be offered to the Clerk of the Superior Court of Johnston County a fraudulently altered note and deed of trust for recordation as shown in Book 629, page 19, in the office of the Register of Deeds of Johnston County, as alleged in the Complaint?

Answer: Yes

The jury having answered each of the issues in the affirmative:

THEREFORE, it is ordered and adjudged that (R.M.M.) the respondent, Elam Remuel Temple be and he is hereby disbarred from the practice of law in the State of North Carolina.

FURTHER MORE, it is hereby ORDERED, ADJUDGED and DECREED that the respondent be taxed with the costs of Court.

It is further ORDERED, ADJUDGED, and DECREED that a certified copy of this judgment be transmitted to the Clerk of Supreme Court of North Carolina and to the Clerk of the Court of Appeals of North Carolina; that a certified copy of this judgment be transmitted to the Clerk of Superior Court of Johnston County, and a certified copy of this judgment be transmitted to the Office of the North Carolina State Bar.

This, the 20th day of October, 1967.

ROBERT M. MARTIN,
JUDGE PRESIDING

To the Signing of the foregoing Judgment Respondent Excepts and Gives Notice of Appeal to the Court of Appeals of North Carolina—Further Notice waived. This 20th day of October 1967.

s/Robert M. Martin

No. 68SC93 ELEVENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

Spring Session 1968

THE NORTH CAROLINA STATE BAR, Complainant

v. *From Johnston*

ELAM REAMUEL TEMPLE, Attorney at Law, Johnston County, Smithfield, North Carolina, Respondent

Appeal by respondent from MARTIN, S.J., October 1967 Session Johnston Superior Court.

Complainant instituted this action pursuant to Chapter 84 of the General Statutes. The complaint is briefly summarized as follows: (Numbers ours)

(1) Respondent is and was at all times referred to in the complaint an attorney at law licensed to practice in North Carolina and is and was subject to the rules and regulations of complainant and the laws of North Carolina.

(2) While acting as an attorney and as an individual, respondent did unlawfully and wilfully (a) engage in conduct involving willful deceit and fraud. (b) engage in activity showing professional unfitness, and (c) did practice chicanery and fraud upon the courts of this State.

(3) AS A FIRST CAUSE OF ACTION: On or about 18 July 1963, respondent attempted to engage in illegal traffic of counterfeit money.

(4) AS A SECOND CAUSE OF ACTION: In November, 1964, respondent prepared or caused to be prepared certain affidavits and engaged in other activities in connection with the estate of one Nancy Williams, all of which were false, erroneous or untrue.

(5) AS A THIRD CAUSE OF ACTION: In the summer of 1964, respondent altered a promissory note and deed of trust which Nancy Williams had executed in his favor in January, 1964, by increasing the amount of said note and deed of trust from Two Hundred Dollars to Twenty-Two Hundred Dollars, without the knowledge and consent of the said Nancy Williams, and caused said altered deed of trust to be recorded in the Johnston County Registry.

Respondent filed answer denying the material allegations of the complaint and requested a trial by jury. Thereafter, on 13 January 1967, he filed a demurrer and motion to dismiss which was heard and denied by Clark, J., on 23 January 1967. On 28 January 1967, respondent filed a motion to strike and a plea in bar and plea of statute of limitations; by order dated 27 February 1967, Mallard, J., denied the motion to strike.

Issues were submitted to and answered by the jury as follows:

"1. Did the respondent, Elam Reamuel Temple, on or about July 18, 1963, attempt to engage in the illegal traffic of counterfeit money, as alleged in the Complaint?

Answer: Yes.

"2. Did the respondent, Elam Reamuel Temple, on or about November 16, 1964, willfully and fraudulently prepare or cause to be prepared false affidavits in connection with the purported or duplicate original Last Will and Testament of Nancy Williams, which the respondent knew to be false and erroneous, as alleged in the Complaint?

Answer: Yes.

"3. Did the respondent, Elam Reamuel Temple, willfully and fraudulently procure or cause to be procured the signature of one Thomas Jones as a witness to a paper writing purporting to be a duplicate original Last Will and Testament of Nancy Williams subsequent to her death, as alleged in the Complaint?

Answer: Yes.

"4. On or about November 16, 1964, did the respondent, Elam Reamuel Temple, willfully and fraudulently offer or cause to be offered false and erroneous affidavits to the Clerk of the Superior Court of Johnston County in connection with the probate of the purported duplicate original Last Will and Testament of Nancy Williams, as alleged in the Complaint?

Answer: Yes.

"5. Did the respondent, Elam Reamuel Temple, willfully and fraudulently alter a note and deed of trust from one Nancy Williams to Dan Perry, Trustee, for the benefit of Elam Reamuel Temple, by willfully and fraudulently changing the amount from $200.00 to $2200.00 without the knowledge and consent of Nancy Williams, as alleged in the Complaint?

Answer: Yes.

"6. Did the respondent, Elam Reamuel Temple, willfully and fraudulently offer or cause to be offered to the Clerk of the Superior Court of Johnston County a fraudulently altered note and deed of trust for recordation as shown in Book 629, page 19, in the Office of the Register of Deeds of Johnston County, as alleged in the Complaint?

Answer: Yes.

From judgment entered on the verdict disbarring respondent from the practice of law in the State of North Carolina and taxing him with the costs of court, respondent appealed.

ROBERT B. MORGAN AND B. E. JAMES, ATTORNEYS FOR COMPLAINANT APPELLEE.

ELAM REAMUEL TEMPLE, ATTORNEY PRO SE.

BRITT, J. G.S. 84-28 deals with discipline and disbarment of attorneys. It authorizes the council of the North Carolina State Bar or any committee of its members appointed for that purpose, or designated by the Supreme Court, to have jurisdiction to hear and determine complaints, charges of malpractice,

corrupt or unprofessional conduct, or other allegations made against any member of the North Carolina State Bar. Subsection (3) provides that the processes of the courts may be invoked to carry out the purposes of Chapter 84 but provides that the person charged may demand a trial by jury.

In his appeal to this Court, respondent made numerous assignments of error to the trial proceedings. We will discuss those we deem pertinent to the appeal.

He contends that the trial court committed error in overruling his demurrer and motion to dismiss, his motion to strike, and his plea of the statute of limitations.

It is well established that upon demurrer a pleading will be liberally construed with a view to substantial justice between the parties, giving the pleader the benefit of every reasonable intendment in his favor. A demurrer will not be sustained unless the pleading is wholly insufficient or fatally defective. A demurrer admits, for the purpose of testing the sufficiency of the pleading, the truth of factual averments well stated, and revelant inferences of fact reasonably deducible therefrom. 6 Strong, N. C. Index 2d, Pleadings, § 19, p. 325, citing numerous authorities. The allegations in the complaint in this action were amply sufficient to survive demurrer.

Respondent's demurrer and motion to dismiss were based on the contention that the facts as alleged do not constitute a cause of action. In BOWLING v. BURTON, 101 N.C. 176, 7 S.E. 701, our Supreme Court held that a defective statement of a cause of action is ground for demurrer but not for a motion to dismiss the action. Respondent was not entitled to have his motion to dismiss granted.

Respondent's motion to strike, denied before the action came on for trial, was made after answer was filed. Granting or denial of the motion then became a matter of discretion for the court, and Judge Mallard properly exercised his discretion in denying the motion. BROWN v. BALL, 226 N. C. 732,

40 S. E. 2d 412. Furthermore, we find that the motion to strike was without merit, and respondent's assignment of error relating thereto is overruled.

The plea of the statute of limitations is not available to respondent in this action. In 7 Am. Jur. 2d. Attorneys, § 62, p. 86; Annotation, 45 A.L.R. 1110, it is said:

> "Disciplinary proceedings are not barred by the general statute of limitations. Nor is a disciplinary proceeding barred because it is grounded on acts that also constitute a crime that cannot be prosecuted in a criminal action because of limitations."

Respondent contends that the trial court erred in permitting certain witnesses to testify as to transactions and conversations between the respondent and third parties who were deceased at the time of the trial, contending that the evidence was violative of G.S. 8-51. We hold that said testimony was not violative of the statute and that the assignments of error relating thereto are without merit.

Assignments of error were also made to the trial court's granting the motion of the U.S. Government to quash the subpoenas of respondent directed to U.S. Secret Service Agents Spicer and Tarlton. Certain rules and regulations are prescribed by the Federal Government for the summoning of Secret Service Agents; the record discloses that respondent failed to comply with the regulations, therefore, we hold that his assignments of error relating thereto are without merit.

Respondent assigns as error the failure of the trial court to grant his motion for judgment as of nonsuit made at the close of complainant's evidence and renewed at the conclusion of all the evidence. We hold that the evidence was more than sufficient to support complainant's complaint and to withstand motions for nonsuit.

On its first cause of action, complainant introduced evidence showing that respondent approached one Jesse Noah Williams

and tried to get him to work with respondent in purchasing counterfeit money. Pursuant to his conversation with Williams, the evidence disclosed that respondent met with Secret Service Agent Huff, posing as Williams' brother-in-law, and attempted to consummate a transaction involving counterfeit money. The testimony also showed that in June or July of 1963, respondent contacted one Ralph C. Winstead, a convicted counterfeiter, and attempted to purchase counterfeit money from him.

On its second cause of action, complainant introduced several witnesses who gave detailed testimony in support of each allegation of the second cause of action.

As to the third cause of action, complainant presented testimony of one Moses Tart who testified that he saw respondent alter the note and deed of trust executed by Nancy Williams by changing the amount of the indebtedeness stated on the note and deed of trust from $200.00 to $2200.00, and that respondent told Tart at the time that no one would know the difference. The deed of trust was thereafter recorded in the Johnston County Registry.

We have stated only a small portion of the voluminous testimony presented by the complainant. The trial court very properly overruled the motions to nonsuit.

Respondent noted 43 exceptions to the trial court's charge; in fact, he excepted to most of the charge and then by exception No. 70, "[d]efendant objects and excepts to the charge of the Court as a whole." Although respondent's numerous exceptions to the charge probably amount to a broadside exception, we have given careful consideration to the charge and each objection made by the respondent. We do not deem it necessary to discuss the numerous exceptions and assignments of error related to the charge but hold that the charge was without prejudicial error.

We have considered each of respondent's assignments of error, and find them without merit. They are all overruled.

The respondent had a fair trial in his home county where a jury of his peers answered appropriate issues against him. The judgment of the Superior Court predicated thereon is Affirmed.

CAMPBELL and MORRIS, JJ., concur.

No. 68SC93 ELEVENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

Fall Session 1968

THE NORTH CAROLINA STATE BAR,
Complainant.

v. *From Johnston*

ELAM REAMUEL TEMPLE, Attorney
at Law, Johnston County,
Smithfield, North Carolina,
Respondent

Appeal by respondent from *Martin (Robert), S.J.*, October 1967 Session, JOHNSTON Superior Court.

The facts of this case are set out in *State Bar v. Temple*, 2 N.C.App. 91. In apt time, respondent filed a petition to rehear. Because a motion of complainant suggesting a diminution of the record had not come to the attention of the Court, although properly filed and with proper notice to respondent, this Court granted the petition to rehear and directed oral arguments under Rule 44(e), Rules of Practice in the Court of Appeals of North Carolina.

ROBERT B. MORGAN and B. E. JAMES for complainant.

ELAM REAMUEL TEMPLE, Attorney *pro se*, and JOHN W. HINSDALE for respondent appellant.

MORRIS, J. Respondent's appeal in this matter was duly docketed and calendared for hearing on 12 June 1968. At that time the respondent did not appear to argue. The matter was calendared for rehearing on 23 October 1968. Again respondent did not appear to argue, nor did counsel who had signed his brief appear to argue, although respondent's petition to rehear specifically requested that the Court direct oral arguments.

We have carefully examined the brief filed by respondent on rehearing and have re-examined the record. All assignments

of error were considered and disposed of in the opinion of Britt, J., in *State Bar v. Temple*, 2 N.C.App. 91, and no useful purpose would be served by a second opinion discussing the assignments of error and reaching the same conclusion. We, therefore, deem it sufficient to say that each of respondent's assignments of error has been considered and found to be without merit.

Affirmed.

CAMPBELL and BRITT, JJ., concur.

NO: _____ ELEVENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA
FALL TERM 1968

THE NORTH CAROLINA STATE BAR	)
Complainant	:
Vs.	: FROM JOHNSTON
	:
ELAM REAMUEL TEMPLE,	:
Attorney at law,	:
Johnston County, North Carolina	)
Respondent	)

Notice of appeal by respondent from MARTIN, Robert, S.J. October 1967 Session, Johnston Superior Court and Honorables BRITT, MORRIS and Campbell, North Carolina Court of Appeals, Fall Session 1968:

That this appeal is taken pursuant to and under the provisions of Rules two and three of the Supplementary Rules of the Court of Appeals for North Carolina and pursuant to and under the Rules, (two and three) of the Supplementary Rules of the Supreme Court of North Carolina and North Carolina General Statute 7A-30.

That the Constitutional questions were raised in respondent brief and was considered by the Court of Appeals of North Carolina.

That the questions of law which were raised and presented to the Court of Appeal of North Carolina and which invokes jurisdiction in The North Carolina Supreme Court are as follows:

(1) Respondent' assignment of errors numbers 1 & 2 and are related and directed to the error of the Court denying respondent' demurrer, motion to strike and plea of statute of limitations, in violation of the U.S. and N.C. Constitutions.

(2) Respondent' assignments of errors Nos. 5,6,7,8,9,10 are directed to the error of the Court in permitting witness Williams to use his notes to refresh his memory which were made and copied from trial in Federal Court at Wilmington N.C. in 1964, in violation of the U.S. and N.C. Constitutions.

(3) Assignment of errors Numbers 11,12,13,14,16, & 15, 19 are related to the admission of testimony by Williams et als as to transactions, acts and conduct with dead people in violation of N.C.G.S. 8-51 and N.C. & U.S. Constitutions.

(4) Assignment of errors Numbers 17 & 24 which are directed to the error of the trial tribunal in quashing the subpoenaes of respondent subpoenaes for Vernon Spicer and C. M. Tarlton, U.S. Secret Service Agents, to appear and testify on respondent' behalf in violation of N.C. & U.S. Constitution.

(5) Assignment of errors Numbers 20 & 22 and directed to the error of the Court permitting witness Thomas Jones to testify in violation of N.C. & U.S. Constitution.

(6) Assignment of errors Numbers 23 & 25 which are directed to the error of the Court by not granting respondent motion for judgment of nonsuit at the close of complainant' evidence and then again at the close of all of the evidence, in violation of N.C. & U.S. Constitution.

(7) Assignment of errors Numbers 26,27,28, 30, 31 & 32 which are related to the charge of the Court as to what General Statute respondent was allegedly to have violated in violation of N.C. & U.S. Constitution.

(8) Assignment of error Number 33,37,38,39,40,41,42, & 43, & 44 & 48 directed to the error of the Court as to what witness Winstead et als. did not in the presence of respondent and the use of the expression "HE SAID" by the Court in violation of N.C. & U.S. Constitution, & N.C.G.S. 1-180.

(9) Assignment of error Number 34 directed to the error of the Court not correctly charging the jury on the testimony of

Williams, a paid informer for the U.S. Secret Service, violation of N.C. & U.S. Constitution.

(10) Assignment of errors Numbers 55,57,58,59, directed to the error of the Court to charge the jury accurately on the law of fraud in violation of N.C.G.S. 1-180 and N.C. & U.S. Constitution.

(11) Assignment of errors Numbers 60,61,62,63,65,66,67 & 72 error of the Court charge to jury as to issues 2,3,4,5,6 and failure to charge the jury at all on issue one in violation of N.C.G.S. 1-180 and N.C. & U.S. Constitution.

(12) That the Court of Appeals erred in permitting addition to the record proper after same had been agreed to by and between complainant and respondent. The respondent doth tender the foregoing as his notice of appeal from the decisions of the Court of Appeals of North Carolina and the trial tribunal.

This the 3rd day of December 1968.

E. R. TEMPLE
Attorney at law
Counsel Pro se
Four Oaks, N. C.

JOHN W. HINSDALE
Attorney at Law
Lawyers Building
Raleigh, North Carolina

Copies forwarded to:

Hon. Theodore C. Brown Jr.
Clerk of the Court of Appeals for N.C.

Hon. B. E. James, Secretary to N. C. State Bar
Justice Building
Raleigh, North Carolina

Honorable Robert Morgan
Attorney General
Lillington, N. C.

NO:_____ ELEVENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA
FALL TERM 1968

THE NORTH CAROLINA STATE BAR	)	
Complainant	)	
vs.	)	FROM JOHNSTON
ELAM REAMUEL TEMPLE, Attorney at Law, Johnston County, North Carolina,	)	
Respondent	)	

MOTION TO DISMISS

NOW COMES THE COMPLAINANT, THE NORTH CAROLINA STATE BAR, AND RESPECTFULLY SHOWS TO THE COURT:

The Respondent, Elam Reamuel Temple, has filed with the Court a paperwriting designated as a Notice of Appeal From the Superior Court of Johnston County and The North Carolina Court of Appeals.

The Respondent states he is appealing under the provisions of Rules two and three of the Supplementary Rules of the Supreme Court of North Carolina, and under the provisions of North Carolina General Statute 7A-30.

Nowhere does the Respondent state with particularity how his rights under any article and section of the Constitution have been violated, nor has the Respondent pointed out where the Trial Court or the Court of Appeals erroneously passed upon any constitutional question involved in the case.

Nor has the Respondent complied with the requirements set forth in *State v. Colson, 274 N.C. 295.*

WHEREFORE, the Complainant respectfully requests that the Court dismiss the attempted appeal by the Respondent,

and permit the Judgment of the Court of Appeals and the Judgment of the Superior Court of Johnston County to remain in full force and effect.

This the 6th day of December, 1968.

THE NORTH CAROLINA STATE BAR
Robert B. Morgan, Trial Attorney
BY .....

SUPREME COURT OF NORTH CAROLINA
Adrian J. Newton, Clerk
January 22, 1969

Mr. Robert B. Morgan
Attorney at Law
Lillington, N. C.

Re: N. C. State Bar v. Temple
No. 5, Spring Term 1969

Dear Mr. Morgan:

Motion to dismiss appeal is filed with the following order: "Allowed by order of the Court in Conference this the 21st day of January 1969. Huskins, J. For the Court."

No written opinion is filed.

Yours very truly,
Adrian J. Newton
Clerk of Supreme Court

AJN/da

Cc: Mr. John W. Hinsdale, Attorney
Lawyers Bldg., Raleigh, N. C.
E. R. Temple, Attorney, Four Oaks, N. C.
Mr. B. E. James, Secy. N. C. State Bar
Theodore C. Brown, Jr. Clerk of Court of Appeals

No. 5 ELEVENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA
SPRING TERM 1969

THE NORTH CAROLINA STATE BAR	)	MOTION FOR A NEW TRIAL ON THE GROUNDS OF NEW EVIDENCE
VS.	)	
ELAM REAMUEL TEMPLE	)	

Now comes the respondent, and respectfully makes a motion for a new trial on the grounds of evidence which is now available and was not presented in the trial of this cause in the Superior Court of Johnston County and showth unto the Court:

I

That this motion for a new trial is being made without waiving any right that the appellant may have by reason of the decision of the Court dismissing the appeal in this case to appeal this cause to the United States Supreme Court.

II

That this motion is being made under and pursuant to the provisions Rules of Practice in the Supreme Court of North Carolina, Rule number 44.

III

That respondent has attached to this motion several affidavits from various people who are in possession of facts which are very material to the issues involved in this cause. That the witnesses will testify in substance to the facts, matters and things set forth in the affidavits. That the facts as set forth in said affidavits are true to the best of respondent' knowledge and belief. That said evidence would be competent, material and relevant should a new trial be granted in this cause. That there has been no laches in the presentation of the evidence to the

Court. That the evidence as set forth in the affidavits is not merely circumstantial evidence but is substantive evidence as pertains to the main issues involved in the proceeding. That at another trial of this cause a different result will probably be reached before a fair impartial jury.

IV

That from respondent' standpoint this cause should not be finally concluded until all of the evidence has been presented to the jury.

V

Respondent makes a motion to the Court that the affidavits be made a part of this motion the same as if fully set forth therein.

VI

That the proposed new evidence which respondent will present to the Court in the event a new trial is ordered is set forth in the affidavits of Rev. Frank A. Armstrong, Rev. Roland Smith, Dan Perry, and E. R. Temple.

WHEREFORE: respondent makes a motion to the Court that a new trial be ordered in this cause based upon the reasons set forth herein, and for such other and further relief that he may be entitled to by reason of the premises.

This ..... day of January, 1969.

Rt. 3, Four Oaks, N. C.

NORTH CAROLINA

AFFIDAVIT

JOHNSTON COUNTY

E. R. Temple first being duly sworn deposes and says:

That I am a citizen and resident of Johnston County, North Carolina, and has been engaged in the practice of law for some 20 years.

That prior to the 8th day of September, 1964, I was an attorney actively engaged in the general practice of law and that prior to said time had handled several lawsuits for one James Marion Royals and Moses A. Tart. That on or about the 8th day of September, 1964, the relationship of attorney and client was terminated by mutual consent between E. R. Temple and James Marion Royals and Moses A. Tart and that a general release by and between the parties was entered into on the 8th day of September, 1964 and that said release is set forth as follows:

"NORTH CAROLINA
JOHNSTON COUNTY

In Re: Cases of Captain William C. Royals et als vs. William Eli Baggett et als. It is herewith mutually agreed and stipulated by and between the parties E. R. Temple party of the first part and James Marion Royals and Moses A. Tart and others parties of the second part, that it is for the best interest of the parties and that it is the desire of both parties that E. R. Temple' employment in the above referred to cases be terminated and that the said E. R. Temple doth herewith withdraw as attorney for said parties of the second part, and J. M. Tart and J. M. Royals doth release E. R. Temple of any and all claims whatsoever. This the 8th day of September, 1964."

/s/ Temple /s/ Tart /s/ Royals.

That the said Moses A. Tart testified at the trial of this cause wherein he stated that E. R. Temple was deeply in debt to him for money furnished in the Baggett et als cases. That it

was the intent of the parties that the release above set forth was to release all of the parties thereto of any claims, among the parties.

That at the time of the trial of this cause the above set forth release had been misplaced and was not available to be used in the trial of the cause. That affiant is now in the possession of said release and that same is very material in this cause to show that respondent was not in debt to Tart as he so testified to.

AFFIANT

This the ..... day of January, 1969

Sworn to and subscribed to before me this the ..... day of January 1969.

.....(N.P.)

NORTH CAROLINA
JOHNSTON COUNTY

REV. FRANK A. ARMSTRONG first being duly sworn deposes and says:

That I am a minister of the Gospel and has been for a period of over 59 years. That I have been knowing E. R. Temple for a period of several years, he having handled several matters for myself and the church. That for a period of several years prior to the death of Nancy Williams I would often times see her in E. R. Temple' office. That on some occasions I would remain in Temple' office while he would go away for short periods of time and that on one occasion Nancy Williams came to the office and told me about E. R. Temple loaning her money and that how nice he was to represent her in Court and her family and wait for his pay.

That I am former president of the Association of Churches of Eastern North Carolina for our denomination and that there are over 62 churches in the Association.

That I was under a subponea to appear as a witness for E. R. Temple at the trial of this cause but the attorney representing E. R. Temple advised that my testimony was not necessary to win the case.

_____
AFFIANT

Sworn to and subscribed to before me this
the ..... day of January 1969.

_____ (N.P.)

No. 5 ELEVENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA
SPRING TERM 1969

THE NORTH CAROLINA STATE BAR

AFFIDAVIT

VS.

ELAM REAMUEL TEMPLE

DAN PERRY first being duly sworn deposes and says:

That I am a colored man 65 years of age and is a citizen and resident of Johnston County, North Carolina. That I worked for E. R. Temple in keeping his office cleaned for several years and more particularly during the years of 1962, 1963, and 1964. That for a period of several years prior to the death of Nancy Williams, Mr. E. R. Temple was her attorney at law. That on several occasions he also represented her adopted son, Frank Bodrick, who has since been killed by the highway patrol, having got shot between the eyes. That Nancy Williams would also bring other people to Mr. Temple' office for the purpose of getting him to represent them and on most occasions I would hear Nancy Williams tell E. R. Temple for him to go ahead and represent them and that she would be responsible for this fees.

That on or about the 25th day of January, 1964, I was in his office, which was located at the time beside of Overby' Funeral Home, Smithfield, North Carolina; that Nancy Williams along with a couple of other colored people came into the office and wanted to borrow some money from E. R. Temple. That E. R. Temple prepared a deed of trust and promissory note in the sum of $2,200.00 and that after he had read it to Nancy Williams, he gave it to me, and asked me to take Nancy Williams and go to the office of Nathan Lassiter, NP. to get the papers probated, which I did and Mr. Temple was not present in Mr. Lassiter' office when the paper was signed by Nancy Williams and probated by Mr. Lassiter. We then returned to E. R.

Temple' office and I saw E. R. Temple give to Nancy Williams the sum of several Hundred dollars. That on other occasions I have seen E. R. Temple loan sums of money to Nancy Williams.

That during the year of 1963, about the month of September, I was in Mr. Temple' office and Nancy Williams together with two or three other people came to the office and I heard Nancy ask E. R. Temple to draft her last will and testament and that she told him that she wanted her adopted son, Frank Bodrick, to have her property. That Mr. Temple prepared the will and then read it to Nancy Williams and she signed same in the presence of Ralph Jones, Ethel Mae Jones and two other people whom I did not know at that time. That the people witnessed the will in the presence of each other.

That I had been knowing Nancy Williams for a period of several years at the time the deed of trust was signed and drafted her husband having died some two or three years prior to this time and that she was fairly active in her social life, with men. That when this matter was tried in the Superior Court the attorney representing E. R. Temple did not permit me to testify on behalf of the respondent.

This the ..... day of January, 1969

AFFIANT

Sworn to and subscribed to before me this
the ..... day of January 1969.

---------- (N.P.)

NORTH CAROLINA
JOHNSTON COUNTY

AFFIDAVIT

ROLAND SMITH first being duly sworn deposes and says:

That I am a citizen and resident of Johnston County and has been a minister of the Gospel for a period of several years. That I have been knowing E. R. Temple for over fifteen years since he commenced the practice of law. I often go to his office for legal advice and consultation and that he has represented me in several different legal matters. That while at his office I would often see Nancy William in there and that I have seen him loan her money on several different occasions while I would be in his office.

When this matter was tried in the Superior Court I was under subponea as a witness for E. R. Temple but never did testify due to the fact that the attorney representing E. R. Temple advised that my testimony was not necessary.

AFFIANT

Sworn to and subscribed to before me this
the ..... day of January 1969.

---(N.P.)

February 13, 1969

Mr. E. R. Temple
Route 3
Four Oaks, N. C.

Re: N. C. State Bar v Temple
No. 5, Spring Term 1969

Dear Mr. Temple:

The above named case is not now pending in this Court. We have certified it to the N. C. Court of Appeals. See Allen v Golding, 174 NC 271.

Yours very truly,

Adrian J. Newton
Clerk of Supreme Court

AJN/da

STATE OF NORTH CAROLINA	)	
	:	IN THE SUPERIOR
	:	COURT
COUNTY OF JOHNSTON	:	
THE NORTH CAROLINA STATE BAR	)	MOTION FOR
Complainant	:	A NEW TRIAL
	:	ON THE
	:	GROUNDS OF
vs	:	NEW
ELAM REAMUEL TEMPLE	:	EVIDENCE
Respondent	:	

Now comes the respondent and respectfully makes a motion for a new trial on the grounds of evidence which is now available and which was not produced at the trial of this cause in the Superior Court and doth showth:

(1) That this motion for a new trial is being made without waiving any right that the respondent may have by reason of the decisions of the N.C. Court of Appeals and the N.C. Supreme Court to appeal this cause to the United States Supreme Court.

(2) That this motion is being made pursuant to the law contained in the decisions of the N.C. Supreme Court as pertains to the granting of new trials upon the discovery of new and additional evidence in a cause.

(3) That respondent has attached hereto several affidavits setting forth in detail the proposed new evidence which will be produced at the trial of the cause in the event a new trial is granted and respondent moves that said affidavits be made a part of this motion the same as if they were fully setforth in this motion. That the witnesses will testify or present to the court in substance the matters and things contained in said affidavits. That the facts as setforth in said affidavits are true to the best of respondent' knowledge and belief. That said evidence would be competent, material and admissable and

relevant should a new trial be granted. That there has been no laches in the presentation of said facts to the Court. That the evidence as setforth in the affidavits is not merely circumstantial evidence but is substantive evidence as pertains to the main issues involved in this cause. That at another trial of this cause a different result will probably be reached by the jury and Court.

(4) That from respondent standpoint this cause should not be finally concluded until all of the evidence has been presented to the Court and Jury.

WHEREFORE respondent makes a motion to the Court that a new trial be granted for the reasons setforth in this motion and for such other and further relief that the respondent may be entitled to by reason of the premises.

This the 27 day of February 1969.

Elam R. Temple
Counsel prose
Four Oaks, North Carolina

NORTH CAROLINA
JOHNSTON COUNTY

E. R. Temple first being duly sworn deposes and says:

That I am a citizen and resident of Johnston County North Carolina and has been engaged in the practice of law for approximately 20 years.

That prior to the 8th day of September 1964 I was an attorney actively engaged in the general practice of law and that prior to said time had handled several lawsuits for James Marion Royals and Moses A. Tart. That on or about the 8th day of September 1964 the relationship of attorney and client between E. R. Temple and Moses A. Tart and James Marion Royals was terminated by mutual consent of all parties and that a general release was made and entered into by and between the parties releasing each of said parties from all and any claims that any of the parties might have against each other by virtue of their association and business dealings said release being as follows:

"NORTH CAROLINA
JOHNSTON COUNTY

In re cases Captain William C. Royals et als vs. William Eli Baggett et als. It is herewith mutually agreed and stipulated by and between the parties E. R. Temple party of the first part and James Marion Royals and Moses A. Tart and others parties of the second part; that it is for the best interest of the parties and that it is the desire of both parties that E. R. Temple' employment in the above referred to cases be terminated and that the said E. R. Temple doth herewith withdraw as attorney for said parties of the second part, and J. M. Tart and J. M. Royals doth release E. R. Temple of any and all claims whatsoever.

This the 8th day of September 1964.

/s/ E. R. Temple
/s/ J. M. Royals
/s/ M. A. Tart

That the said Moses A. Tart testified at the trial of this cause in the Superior Court of Johnston County N.C. and testified that E. R. Temple was deeply in debt to him for money furnished in the Baggett et als cases. That it was the intent of the parties that the release above setforth was to release all of the parties thereto to any and all claims among the parties.

That at the time this cause was tried in the Superior Court the above release had been misplaced and affiant could not locate same at the trial of this cause. That affiant is now in possession of the release and that same is very material in this cause to show that respondent was not in debt to witness Tart et als.

E. R. Temple
AFFIANT

Sworn to and subscribed to before me
this the 26 day of February 1969.

/s/ Helen B. Moody (N.P.)
My Comm. expires 9-8-69

NORTH CAROLINA
JOHNSTON COUNTY

ROLAND SMITH first being duly sworn deposes and says:

That I am a minister of the Gospel of God and has been for a period of several years. That I am a citizen and resident of Johnston County North Carolina. That I have been knowing E. R. Temple for a period of around nineteen years. That I often times go to his office for legal consultation and advise and that he has represented me on several different occasions. That I have often times seen him loan money to Nancy Williams now deceased. That E. R. Temple also represented Nancy Williams' adopted son, Frank Bodrick and that to my knowledge at the time he would represent them, would not receive his pay at that time.

/s/ Rev. Roland Smith
AFFIANT

Sworn to and subscribed to before me
this the 26 day of February 1969.

/s/ Mrs. Helen B. Moody (N.P.)
My Comm. expires 9-8-69

NORTH CAROLINA
JOHNSTON COUNTY

DAN (-) PERRY first being duly sworn deposes and says:

That I am a colored man 65 years of age and is a citizen and resident of Johnston County North Carolina. That I was E. R. Temple' office boy for a period of several years and in particular from 1961-1964 and keep his office moped and cleaned up. That for a period of many years prior to the death of Nancy Williams he was her lawyer and handled several lawsuits for her and her friends and represented her and her friends in the Courts of North Carolina. That on several occasions he also represented her adopted son Frank Bodrick and that often times Nancy Williams would also bring other colored people into his office for the purpose of E. R. Temple to represent them, which he did. Very seldom would Nancy Williams and her friends have any cash, although he would go ahead and represent them upon the assurance from Nancy Williams that she would pay him in the fall.

That on or about the 25th day of January 1964 I was in his office, which was located at that time beside of Overby Funeral Home, Smithfield, N. C.; that Nancy Williams along with a couple of other colored people came into the office and wanted to borrow some money from E. R. Temple. That after some discussion E. R. Temple prepared a deed of trust and a promissory note in the sum of $2,200.00 and that he read the papers to them and instructed me to go with Nancy Williams to the office of Nathan Lassister, N.P. to get the paper probated, which I did. That after we went to Nathan Lassiter office and she witnessed her mark and the papers were probated we returned with the paper to E. R. Temple' office and I saw E. R. Temple give to Nancy Williams several hundred dollars and advised Nancy Williams that she was going a little too fast. Later the same day I was out in the country in the arear of Coonsborough at a house to get me a drink and I saw a couple of boxes of liquor delivered to Nancy and Bodrick. That on

other occasions I saw E. R. Temple loan to Nancy Williams money.

That during the year of 1963 I was in E. R. Temple law offices when Nancy Williams came in and wanted him to prepare her will for him. That I saw him type the will on his typewriter and that he read it to her and to the best of my recollection she told E. R. Temple that she wanted her adopted son, Frank Bodrick to have all of her property after the debts were paid upon her death. That at the time he wrote the will RALPH JONES, ETHEL MAE JONES, a white boy whom I did not know and some other colored people were in the office. That I saw them witness and sign the will.

That at the time the deed of trust was probated by Mr. Nathan Lassiter E. R. Temple was not present. That when this matter was tried in Superior Court I was not called as a witness due to the advise of the attorney representing E. R. Temple.

/s/ Dan Perry
AFFIANT

Sworn to and subscribed to before me
this the 26 day of February 1969.

/s/ Mrs. Helen B. Moody (N.P.)
My Comm. expires 9-8-69

NORTH CAROLINA
JOHNSTON COUNTY

REVEREND FRANK A. ARMSTRONG first being duly sworn deposes and says:

That I am a citizen and resident of Johnston County State of North Carolina and have been a colored minister of the Gospel of God for over forty years. That I am 59 years of age and have been knowing E. R. Temple for a period of many years; that he has been my legal represenator and has handled several cases for me. That for a period of several years prior to the death of Nancy Williams I would see her often times in his office and on several different occasions I would see him loan money to her. That I often keep the office for him and while he was away Mrs. Nancy Williams would come to his office and that she told me on several different occasions that Mr. Temple had loaned her money and that he had represented her and her friends in the Courts and waited for his pay for her to pay him at her convenience. That E. R. Temple not only tried to accomodate Nancy Williams but he has always endeavored to assist the members of the negro race. That I have often worked for him and he has always paid me above average wages.

That I am former president of the Association of Churches for Eastern North Carolina and often times conduct services in a colored church which is located near the E. R. Temple homeplace in the community of Four Oaks, N. C. That there are 62 churches in our association. That I have never known E. R. Temple to mistreat any colored people when it possible for him not to do so. That I was not available to testify for E. R. Temple upon the trial of this cause in the Superior Court.

/s/ Rev. Frank A. Armstrong
AFFIANT

Sworn to and subscribed to before me
this the 26 day of February 1969.

/s/ A. L. Sanders (N.P.)

NORTH CAROLINA
JOHNSTON COUNTY

ETHEL MAE JONES first being duly sworn deposes and says:

That I am a citizen and resident of Johnston County North Carolina and the wife of Ralph Jones. That sometimes during the fall of 1963 during the month of September I was with my husband in the town of Smithfield, N. C. and we went to E. R. Temple law offices which was located in the small building near Overby' funeral home. That while we were there Nancy Williams came in and wanted E. R. Temple to draft her will. I heard her tell him that she wanted Frank Bodrick to be the beneficiary under the will. There was a couple of colored boys with her at the time and also a young white boy whom I did not know was also in there. After E. R. Temple drafted the will Nancy Williams placed her mark on it and my husband and the white boy signed the will in our presence. I was present when the will was drafted and signed. I did not testify for E. R. Temple at his trial in Superior Court because I was not asked to.

/s/ Ethel Mae Jones
AFFIANT

Sworn to and subscribed to before me
this the 26 day of February 1969.

/s/ A. L. Sanders (N.P.)

NORTH CAROLINA	IN THE SUPERIOR COURT
JOHNSTON COUNTY	69-CvS-312

THE NORTH CAROLINA STATE BAR, Complainant,

vs.

ELAM REMUEL TEMPLE, Attorney at Law, Smithfield, Johnston County, North Carolina, Respondent

JUDGMENT

This cause came on before the undersigned Judge presiding at the March 31 Session, Superior Court of Johnston County, and was heard upon the motion of the Respondent for a new trial on grounds of new evidence. At said hearing the Respondent offered evidence which he contends constitutes newly discovered evidence.

At the time of the hearing on April 8, 1969, after hearing argument of counsel on the agreement of both parties, it was agreed that each side could have until April 12, 1969, to file additional affidavits, and that each side could have until April 16, 1969, to file memoranda of law or briefs in support of their position. It was further agreed, as appears in the record, that the undersigned could thereafter without further hearing on this matter render judgment out of term and out of the District.

On the evidence offered at the hearing and the briefs, and after argument of counsel, the Court finds that the alleged newly discovered evidence fails to meet the requirements for the calendaring of a new trial, in that it is made to appear to the Court that the evidence offered on behalf of the Respondent involves witnesses who were subpoenaed at the original trial of this matter in October of 1967; and further that the alleged newly discovered evidence would tend only to be cumulative or tend only to discredit former witnesses; and that said evidence

is not of such a nature as to show on another trial a different result would probably be reached.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Respondent's motion for a new trial on the grounds of newly discovered evidence be and the same is hereby denied.

This the 5th day of May, 1969.

Hamilton H. Hobgood

JUDGE PRESIDING

NORTH CAROLINA — IN THE SUPERIOR COURT
JOHNSTON COUNTY — 69-CvS-312

THE NORTH CAROLINA STATE BAR, Complainant,

vs.

ELAM REMUEL TEMPLE, Attorney at Law, Smithfield, Johnston County, North Carolina, Respondent

JUDGMENT

This cause coming on to be heard and being heard before the undersigned Judge Presiding at the March 31, 1969, Session of the Superior Court of Johnston County.

AND IT APPEARING to the Court that:

I. The Honorable Robert M. Martin, Judge Presiding at the October, 1967, Civil Session of the Superior Court of Johnston County, signed a Judgment in the above-entitled action as will appear in the record of this cause;

II. The Respondent excepted said Judgment and perfected an Appeal to the Court of Appeals of North Carolina;

III. Upon the hearing of said Appeal the Court of Appeals of North Carolina affirmed the Judgment of the Superior Court;

IV. The Respondent petitioned and was granted a rehearing before the Court of Appeals of North Carolina;

V. Upon the hearing of said rehearing the Court of Appeals of North Carolina affirmed its previous opinion and affirmed the Judgment of the Superior Court;

VI. The Respondent filed an appeal to the North Carolina Supreme Court, and said appeal was dismissed by the Supreme Court of North Carolina on January 21, 1969;

VII. Thereafter Respondent filed a Motion for a New Trial on the Grounds of New Evidence in the Supreme Court of North Carolina, and the Supreme Court refused to take action;

VIII. Thereafter the Court of Appeals of North Carolina duly certified its opinion and Judgment in this cause to the Clerk Superior Court of Johnston County, and same is now on file in said Clerk's office, having been certified down on January 29, 1969.

AND IT FURTHER APPEARING TO THE COURT that when this matter came on to be heard at the March 31 Session of the Superior Court on April 8, 1969, both parties agreed that Judgment could be entered in this matter out of term and out of the District by the undersigned.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that in accordance with the Opinion of the Court of Appeals of North Carolina, the said Judgment of this Court entered by the Honorable Robert M. Martin, Judge Presiding at the October 1967 Session of this Court be, and the same is hereby, affirmed for execution of sentence.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the disbarment from the practice of law of the Respondent Elam Remuel Temple as provided in said Judgment shall be in full force and effect from the date that the Opinion of the Court of Appeals of North Carolina was certified to the Office of the Clerk of the Superior Court of Johnston County.

This the 5th day of May, 1969.

Hamilton H. Hobgood
JUDGE PRESIDING

NO. 6911SC489 ELEVENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

Fall Session 1969

THE NORTH CAROLINA STATE BAR,
Complainant

v. From Johnston

ELAM REAMUEL TEMPLE, Attorney
at Law, Smithfield,
North Carolina,

Respondent

Appeal from Hobgood, J., 31 March 1969 Session of Johnston County Superior Court.

This is an appeal by the respondent from an order and a judgment entered on 5 May 1969. The order denied respondent's motion for a new trial on the grounds of newly discovered evidence. The judgment affirmed a prior judgment disbarring respondent from the practice of law and ordered that judgment into effect from 29 January 1969, the date an opinion of this court affirming the judgment of disbarment was certified to the Clerk of Superior Court of Johnston County.

Robert B. Morgan for plaintiff appellee.

E. R. Temple *in propria persona.*

GRAHAM, J. Judgment disbarring the respondent from the practice of law was entered 24 October 1967 after a jury had found him guilty of six separate acts of fraudulent and unprofessional conduct. The respondent's appeal was docketed and calendared but he did not appear in this court to argue. His appeal was nevertheless given thorough consideration and all assignments of error were disposed of in the opinion of Britt, J. State Bar v. Temple, 2 N.C. App. 91, 162 S.E. 2d 649. Thereafter the respondent petitioned for a rehearing, specifically requesting that oral arguments be directed. His petition was

granted and the matter was duly docketed and calendared for hearing. Again the respondent did not appear to argue, nor did the attorney who signed his brief. The respondent's assignments of error were again found to be without merit. State Bar v. Temple, 3 N.C. App. 73, 164 S.E. 2d 13. On 3 December 1968 the respondent filed notice of appeal in the Supreme Court of North Carolina, alleging he was appealing as a matter of right. The appeal was dismissed by the Supreme Court on 21 January 1969. On 12 February 1969, the respondent filed a motion for a new trial in the Supreme Court on the grounds of newly discovered evidence. Upon being advised that the matter was not then pending in the Supreme Court, the respondent filed a similar motion in the Superior Court of Johnston County. The order denying that motion and the entering of the formal judgment of execution are the subject of this appeal.

The order and judgment appealed from are dated 5 May 1969. To properly effect this appeal it was necessary that the respondent docket the record on appeal in this court within ninety days after 5 May 1969. Rule 5, Rules of Practice in the Court of Appeals of North Carolina. The ninetieth day was on Sunday, 3 August 1969, so the respondent had through Monday, 4 August 1969, to docket the appeal. However, the appeal was not docketed in this court until 26 August 1969. No order appears in the record before us extending the time within which the appeal could be docketed and in accordance with the practice of this court and pursuant to Rule 48, Rules of Practice, *supra*, this appeal is dismissed *ex mero motu* for failure to docket within the time prescribed by Rule 5.

In dismissing this appeal we nevertheless note that the respondent's motion for a new trial was addressed to the sound discretion of the trial court. The decision of the trial court is not reviewable absent an abuse of discretion and no such abuse has been shown. State v. Morrow, 264 N.C. 77, 140 S.E. 2d 767; Allen v. Gooding, 174 N.C. 271, 93 S.E. 740. The defendant's motion and affidavits fall far short of establishing the necessary prerequisities for granting a new trial on the basis of

newly discovered evidence. State v. Casey, 201 N.C. 620, 161 S.E. 2d 81.

Appeal Dismissed.

CAMPBELL and PARKER, JJ., concur.

A TRUE COPY
THEODORE C. BROWN, JR.
CLERK OF THE COURT OF APPEALS
OF NORTH CAROLINA
By Janet Ellis
DEPUTY CLERK
October 23, 1969

No. ELEVENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA
SPRING TERM 1970

THE NORTH CAROLINA STATE BAR Complainant	:	
Vs	:	From Johnston
ELAM REAMUEL TEMPLE, Attorney at law, Smithfield, North Carolina Respondent	:	

Petition For Writ of Certiorari to North Carolina Court of Appeals to Review its Decision.

TO: THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF NORTH CAROLINA:

The petitioner, Elam Reamuel Temple, hereby petitions for a Writ of Certiorari and requests certification of the above captioned action for review by the Supreme Court of North Carolina, pursuant to the authority granted by North Carolina General Statutes 7A-31, and to that end the petitioner respectfully shows unto the Court the following:

(1) That this is a civil action brought by the North Carolina State Bar wherein the Complainant alleged that on or about November 1964 appellant prepared or caused to be prepared certain affidavits and engaged in other activities in connection with the estate of Nancy Williams which were false, erroneous or untrue; that on or about 18 July 1963 petitioner attempted to engage in traffic of counterfeit money and that during the summer of 1964 petitioner altered a promissory note and deed of trust. Petitioner filed answer denying all allegations. This cause was tried in the Superior Court Johnston County October 1967 resulting in a jury verdict against the petitioner from which he appealed from the judgment of the Court disbarring appellant from the practice of law in the State of North Caro-

lina. The North Carolina Court of Appeals upheld the action of the lower Court. In due course of time petitioner filed a motion for a new trial on the grounds of newly discovered evidence which was heard at the March 31, 1969 Term Johnston County Superior Court before HOBGOOD, J. who denied the motion for a new trial and affirmed the judgment of the Court entered by Robert M. Martin, Judge Presiding October 1967 Session of Johnston County Superior Court.

(2) The North Carolina Court of Appeals dismissed *ex mero motu* petitioner's appeal from the judgments of Hobgood, J. and cited as authority for so doing Rule 48 and Rule 5, Rules of Practice in the Court of Appeals of North Carolina. A portion of Rule 5 is as follows: "If the record on appeal is not docketed within ninety days after the date of the judgment, order, decree or determination appealed from, the case may be dismissed under Rule 17, if the appellee shall file a proper certificate prior to the docketing of such record on appeal." In the present case the appellee did not file any certificate. The appellee did enter into an agreement (oral) that petitioner docket his record on appeal by 10 A.M. Tuesday, August 26, 1969. That the notice prepared by Court of Appeals of North Carolina, Office of the Clerk, Call of Calendar in the Court of Appeals provides: "In order for an appeal to be heard at this call, cases from the Tenth & Eleventh Districts, the Record on Appeal must be docketed by 10 A.M. August 26, 1969.

(3) That the opinion of the Court of Appeals ignores the fact that the appellee did not file a proper certificate prior to the docketing of the record on appeal and also ignores their other rule that record on appeal be docketed by 10 A.M. August 26, 1969.

(4) That the opinion of the North Carolina Court of Appeals goes somewhat into detail on the history of the case in the Court of Appeals. It is submitted that some 74 assignments of error were grouped into 47 assignments of error when the matter was heard the first time in the Court of Appeals and

without discussing any of the assignments of error in detail and in a very short opinion and without citing any authority held all of them to be without merit. Likewise in the opinion of the Court of Appeals dismissing the action the Court again without discussing the merits of petitioner's motion for a new trial on the basis of newly discovered evidence merely stated that the motion and affidavits *fall far short* of establishing the necessary prerequisites for the granting of a new trial and cite State vs. Casey 201 N.C. 620. In view of the action of the Court of Appeals during the three times that this cause has been before the Honorable Court a petition to rehear in this cause appeared to be useless. That the Court of Appeals in its last decision completely ignored petitioner's assignments of error numbers (2), (3) & (4), other than stating that no abuse of the discretion of the trial court has been shown. The record proper sustains the fact that the trial court erred in making certain findings of fact to wit: the portion of the judgment which reads: "in that it is made to appear to the Court that the evidence offered on behalf of the respondent involves witnesses who were subpoanaed at the original trial in October 1967." The record presents that subpoenaes were issued but does not show that they were served. The lack of findings of facts and the incorrect findings of facts constitute abuse of discretion. The record proper presents uncontradicted evidence that the Court of Appeals did not elect to discuss in detail the substance of assignment of errors number 2,3, & 4, or any assignment of error and the record so shows.

(5) Appellee's brief relies entirely on the case of STATE VS. CASEY 201 N.C. 620 as authority to support the judgment of the trial Court. In substance the case of State vs. Casey set-forth the prerequisites to the granting of a new trial on the ground of newly discovered evidence as follows:

(1) That the witness or witnesses will give the newly discovered evidence.

(2) That such newly discovered evidence is probably true.

(3) That it is competent, material and relevant.

(4) That due diligence was used and proper means were employed to procure the testimony at the trial.

(5) That the newly discovered evidence is not merely cumulative.

(6) That it does not tend only to contradict a former witness or to impeach or discredit him.

(7) That it is of such a nature as to show that on another trial a different result will probably be reached and that the right will prevail.

The only argument which appellee presents that the above prerequisites had not been complied with appears on page 9 of their brief in the Court of Appeals, as follows: "The affidavits attached to the respondent's motion for a new trial show themselves to be either merely cumulative or contradictory and his failure to show that due diligence was used to procure the testimony at the trial." The facts and record does not sustain this argument. How could the evidence presented in the affidavit of Rev. Frank A. Armstrong, "that the deceased woman had told him that she owed to petitioner money" be cumulative or contradictory when no person testified at the original trial of this cause to the contrary.

(6) Several references have been made by the Court of Appeals in its decisions "that respondent has failed to appear and argue his cause" and it is submitted that the Court of Appeals could have been influenced by the failure of respondent to appear. It is submitted in ethical matters wherein an attorney' integrity is involved its a policy followed by many lawyers to remain silent and let the arguments be waged by others.

(7) A brief statement on each of the seven pre-requisities as stated and setforth in STATE VS. CASEY 201 N.C. 620 as pertains to the present cause submitted herewith:

(1) As to pre-requisite *number one* "that the witness or wit-

nesses will give the newly discovered evidence" has been established and not denied by the appellee. The various witnesses who signed the affidavits were present in Court at the hearing in the trial tribunal and the appellee was given the privilege to cross-examine them but elected not to do so. There was not presented any counter affidavits by the appellee and therefore it is submitted that petitioner carried the burden as to pre-requisite number one.

(2) As to pre-requisite *number two* that "such newly discovered evidence is probably true" has also been established by un-contradicted affidavits by petitioner. The contents of the affidavits are not denied nor has the creditability of the evidence contained therein been impeached.

(3) As to pre-requisite *number three* "that the evidence is competent, material and relevant" has also been established by un-contradicted evidence in the affidavits. The affidavit of Dan (-) Perry presents evidence bearing on the execution of the deed of trust and will; the affidavit of Rev. Armstrong establishes the debt which the dead woman owed to petitioner and likewise substantiated by Rev. Roland Smith. Petitioner submit that this evidence was material, competent and relevant and that same has not been denied by the appellee at the trial of this cause in Superior Court.

(4) As to pre-requisite *number four* "that due diligence was used and proper means were employed to procure the testimony at the trial" petitioner argues that he has carried the burden. The record proper without doubt reveals that proper subponeas were issued for the witnesses but does not show that they were served. The record proper shows and reveals that due diligence was used to procure the testimony of the various witnesses. Subponeas were issued for the various allegedly Governmental agents and due to no fault on petitioner part they were prohibited from testifying. The trial court holding in effect that petitioner had not complied with a letter which had been issued by the Attorney General of the United States prohibiting Government Agents from testifying unless and until permission had

been obtained from the U.S. Attorney General permitting said testimony. In the first place it is very doubtful that one lawyer out of twenty thousand would know of the existence of any such letter and in the second place since when under the American system of judicial procedure must a person obtain the permission of anyone and advise him as to what he expects an officer of the Government to testify to, as was held by the Court of Appeals in the present case. The Court of Appeals having declined to discuss the constitutional aspect and feature of the letter which was issued by the then U.S. Attorney General. Petitioner submit that he had nothing to do with the commencement of this cause and that the Courts are not being fair with him when in effect an immunity is granted to those who helped to originate such ridiculous accusations. To prohibit the benefit of all of the evidence bearing upon the issues under consideration should be disturbing to any average citizen.

As to pre-requisite *number five* "that the new evidence is not merely cumulative" has been established by the respondent by the greater undenied weight of the evidence. How could the evidence presented and contained in the affidavits of Rev. Frank A. Armstrong, Rev. Roland Smith and Dan Perry be cumulative when no other person testified in substance as to the execution of the will, deed of trust, promissory note and the establishment of the debt.

As to pre-requisite *number six* "that the new evidence does not tend only to contradict a former witness or to impeach or discredit him," petitioner argues that since no other witness testified to the things and matters contained in the affidavits signed by Rev. Smith, Rev. Armstrong and Dan Perry, that this evidence does not impeach, contradict or discredit any former witness other than the accusations made by the N.C. State Bar. The appellee has never endeavored to present any evidence establishing the execution of the deed of trust, promissory note and will. From complainant standpoint they have never been established.

As to pre-requisite *number seven* "that a different result will

probably be reached and that right will prevail", has not only been established by the evidence presented in the affidavits submitted herewith but also by the action of the attorney for complainant in the recent indictment of his main witness, Jesse Noah Williams, for the stealing of some $100,000.00; the indictment being in the Superior Court of Johnston County, North Carolina.

At the trial of this cause in the Superior Court of Johnston County petitioner subponeaed several Government agents, two of whom were present but were not permitted to testify and one of whom they say was dead at the time of the trial. Due to no fault on the part of petitioner their testimony was not presented to the Court and Jury. As to whether the supposed to be Secret Service Agent was dead at the time of the trial of this cause is doubtful as the present U.S. Attorney General and the present head of the U.S. Secret Service in North Carolina, Mr. Vernon Spicer, refuses to advise petitioner when and where Mr. Huff died and when and where he is buried at and/or creammated and/or advise petitioner anything to establish the truth on this man. That right may prevail is the paramount objective in this cause. It is not certain what the results will be upon another trial but certainly there exist a strong probability that right will prevail when all of the evidence has been presented.

(8) The Court of Appeals in its last decision through oversight, haste or otherwise did not elect to discuss assignment of error number 4 which deals with the constitutional rights of petitioner involved in this cause and more specifically directed to N.C. Constitution Article I Section 17 "no person ought to be taken, imprisoned or disseized of his freehold, liberties or privileges, or outlawed or exiled or in any manner deprived of life, liberty or property but by the law of the land," and U.S. Constitution Amendment XIV Sec 1 portion which reads "Nor shall any state deprive any person of life, liberty or property without due process of law, nor deny any person within its jurisdiction the equal protection of the law," and U.S. Constitu-

tion Amendment V portion thereof which reads "nor be deprived of life, liberty or property without due process of law."

(9) That the legal principle involved in this case is one of major significance to the jurisprudence of this State and one which has significant public interest, and especially to the North Carolina State Bar, its members and petitioner.

(10) At the trial of this cause in the Superior Court of Johnston County October 1967 a major portion of the trial was devoted to an alleged debt which petitioner was alleged to have owed one Moses A. Tart, one of the few witnesses which complainant presented in this cause. Since the trial petitioner was sued by the said Moses A. Tart for said debt in the District General Court of Justice Johnston County and petitioner received a favorable verdict. This had abosolutely nothing to do with the allegations made against the petitioner in the original complaint but the trial Judge from the mountains permitted such into the trial of the cause and the Court of Appeals twice said it was right to do so. Petitioner procured a general release from the said Moses A. Tart same not being available to be produced at the trial of the cause due to the surprise attack that complainant made on him that he had cheated and defrauded witness Tart of large sums of money. Such procedure was abosolutely ridiculous even to be pursued by the simplest of legal minds and yet the trial court and the Court of Appeals placed the stigma of their integrity upon such legal procedure, together with the Secretary of the N.C. State Bar and their trial attorney Mr. Morgan and then say it is right to take petitioner' license based upon such judicial procedure.

(11) A portion of the alleged misconduct on petitioner part originated at a trial in Federal Court during the fall of 1964 charging petitioner with contempt of court which was allegedly to have happened during the spring of 1963. Witness Jesse Noah Williams an imposture and witness L. T. Huff an imposture were the main witnesses against petitioner in that cause. This cause remained in the Federal Courts through 1967 and petitioner ultimately served 108 days for a 100 day Federal

prison sentence. Petitioner endeavored in vain through out the procedures of the three different times he was tried in Federal Court to require the Federal Court to require the presence of witness Williams and Huff at the trials subsequent to the trial of 1964 but the Federal District Court, the Circuit Court of Appeals and the U.S. Supreme Court placed their affirmation upon the action of the trial court that witnesses Williams and Huff be not required to appear at the subsequent trials. The truth of the matter is that there never was a Secret Service Agent by the name of L. T. Huff, that he was an imposture presented to the Court by the then U.S. Attorneys who prosecuted petitioner in the Federal Court. At the trial of this cause October 1967 Johnston County Superior Court the petitioner caused to be issued a subpoena for witness L. T. Huff and properly placed same in the hands of the Sheriff of Columbia, S.C. That said subpoena was returned to petitioner with the notation, "Mr. L. T. Huff died about a year ago.". Petitioner alleges that said return on the subponea is false. That the petitioner has checked with various Governmental agencies and sources and has been unable to establish the time of death and place of burial of the said L. T. Huff. If a fraud has not been committed then why is it that Mr. Vernon Spicer, Chief of U.S. Secret Service for N.C. and the Office of the U.S. Attorney General does not advise petitioner as to the time of death and place of burial of the said L. T. Huff. The Court may inquire as to how this is important and germane to the status quo of the case. Throughout Williams' testimony he referred to the fact that he and Mr. Huff did so and so during the course of the investigation of petitioner during the spring of 1963. The return on the subpoena which states "Mr. L. T. Huff died about a year ago" is a fraud and false. It was from the testimony of Williams and Huff that the foundation of a part of this cause was laid in Judge Warlick' Court October 1964 and it is submitted that only through the medium of a new trial that even a fair attempt may be made by petitioner to establish the truth in this cause.

(12) That the last decision of the North Carolina Court of Appeals was certified to the Johnston County Superior Court on November 3, 1969, that a copy of the three decisions of the North Carolina Court of Appeals are attached to this Petition.

(13) Petitioner submits: "He who structs and flirts his hour on the stage soon vanishes and is heard of no more." (Tennyson)

"On the fields of friendly strief seeds are sown which during other years upon other fields victories are won." (From the address of General Douglas MacArthur to his troops upon his return to the Philippine Islands.)

WHEREFORE: Petitioner prays the Court that this case be certified for transfer to the Supreme Court of North Carolina for review and for such other and further relief that petitioner may be entitled to by reason of the premises.

This the 18 day of November 1969.

Respectfully submitted:
John W. Hinsdale
Attorney at law
Reamuel Temple—Individually

STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON

Elam Reamuel Temple first being duly sworn deposes and says that he has read the foregoing petition for a writ of certiorari, that the things and matters stated and setforth therein are true to the best of his knowledge except as to those matters and things therein stated upon information and belief and as to it he believe same to be true.

Elam R. Temple
AFFIANT

Sworn to and subscribed to before me
this the ..... day of November 1969

---------- (N.P.)

SUPREME COURT OF NORTH CAROLINA
Adrian J. Newton, Clerk
December 3, 1969

Mr. John W. Hinsdale, Attorney
Lawyers Building
Raleigh, N. C. 27601

Re: The North Carolina State Bar
v Elam Reamuel Temple
#91PC, Fall Term 1969

Dear Mr. Hinsdale:

Petition for writ of certiorari to the North Carolina Court of Appeals to review its decision, 6 N.C. App. 437, is filed with the following order:

"DENIED by order of the Court in conference this the 2 day of December 1969. Huskins, J. for the Court."

No written opinion is filed.

Yours very truly,
Adrian J. Newton
Clerk of Supreme Court

AJN/da
Cc: Elam Reamuel Temple
The N. C. State Bar

No. 68SC93 ELEVENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS
Spring Session, 1968

THE NORTH CAROLINA STATE BAR, Complainant,	)	
v.	)	From Johnston
ELAM REAMUEL TEMPLE, Attorney at Law, Johnston County, Smithfield, North Carolina. Respondent.	)	

Before MARTIN, S.J., October 1967 Term, Johnston Superior Court. RESPONDENT Appealed from Jury Trial. Filed C. A. 3/8/68.

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jects and excepts, and appeals to the North Carolina Court of Appeals. Notice given in open court; further notice waived. The respondent is allowed sixty days to prepare and serve statement of case on appeal, and the complainant is allowed thirty days thereafter within which to serve countercase or exceptions. Appeal bond in the sum of $300.00 adjudged sufficient.

This the 20th day of October, 1967.

ROBERT M. MARTIN
Judge Presiding.

EXCEPTION — This is
RESPONDENT'S EXCEPTION #73.

ACCEPTANCE OF SERVICE

Service of the foregoing Statement of Case on Appeal is hereby accepted and receipt of copy of same is hereby acknowledged.

This the 20th day of December, 1967.

MORGAN & JONES
by R. H. Jones
ATTORNEYS FOR COMPLAINANT.

ORDER extending time, etc.:

THIS CAUSE came on to be heard upon the motion of the respondent, Elam Reamuel Temple, by and through his attorney of record Wiley Narron; the respondent seeks 45 days additional time to prepare and serve his case on appeal and as grounds for said motion has represented to the Court that the respondent has been confined to prison pursuant to an order of the U. S. District Court for the Eastern District of North Carolina, and is now so confined. Your respondent has shown further that his attorney has not had adequate time to prepare the record on appeal and to submit said record to the respondent for his personal review. The complainant, The North Carolina State Bar, through its attorney of record,

Robert Morgan of Lillington, has consented to such an extension, expressing on behalf of the

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Mr. Huff had in Mr. Williams' house that was supposed to be given to Mr. Temple. I do not know how much it was, but it was good money. Mr. Huff brought the money. Mr. Huff was supposed to be Mr. Williams' brother. The money was to be given to Mr. Temple to buy the counterfeit money. Mr. Temple was to come by and pick it up. The money was not given to Temple because things got messed up, he said.

I know Mr. Williams has had quite a bit of difficulty with a lot of people around town.

Q I ask you if you don't know for a fact that Mr. Williams has a bad character and reputation in the community where he lives?

A Well, I wouldn't say that, as to his debts and hot temper, but I, other than that—he has always seemed to be a very dedicated man. Other than he was hot-tempered and financially in bad shape, and from the result of that I think he was rather fractious. I would say he was a temperamental fellow. As far as bad character, I wouldn't say. I have heard a lot of bad talk about him.

REDIRECT EXAMINATION By Mr. Morgan:

I have always found Mr. Williams' reputation for truthfulness and honesty to be rather truthful.

VERNON D. SPICER testified on DIRECT EXAMINATION By Mr. Morgan:

Q Mr. Spicer, you are Mr. Vernon D. Spicer?

A Yes, sir.

Q I believe you were subpoenaed here by the respondent, Mr. Temple, were you not?

A Yes, sir.

Q Mr. Spicer, where do you reside?

A Charlotte, North Carolina.

Q What is your occupation or profession?

A I'm Special Agent in charge, United States Secret Service.

Q Where is your office?

A Charlotte.

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Q Were you Special Agent in Charge of the United States Secret Service in Charlotte in July of 1963?

A Yes, sir.

Q As such, Mr. Spicer, did you have an occasion to have an investigation concerning counterfeit money involving the respondent?

MR. GERALD BASS: Your Honor, may I be heard?

COURT: (Retires the jury from the courtroom).

MR. BASS: Your Honor, for the record my name is Gerald L. Bass, Assistant U. S. Attorney, from Raleigh, North Carolina. I'm here in this matter to represent Mr. Spicer as Agent in Charge of United States Secret Service for North Carolina; we would like to state to the Court we have to object to Mr. Spicer's testimony in the matter; he is prohibited by Federal law from testifying in this tribunal or any other tribunal concerning any information or any document which was gathered as a result of his employment in his particular capacity as a member of the United States Secret Service. We refer and cite to Your Honor the Code of Federal Regulations, Title 31, Section 1.3, which states that Treasury Department officers and employees are prohibited from testifying in court or otherwise with respect to information obtained as a result of their official capacity and are prohibited from furnishing official documents in compliance with subpoena duces tecum without the prior approval of the Secretary, the Under Secretary and the Assistant Secretary or the Administrative Assistant to the Secretary or the head of the Bureau Office or division of the department in which such officer or employee is employed. In cases where the giving of testimony is desired an affidavit by the litigant or his attorney setting forth the interest of the litigant and the information with respect to what testimony of the officer or employee is desired must be submitted before permission to testify will be granted; permission to testify will in all cases be limited to the information as set

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forth in the affidavit or to such portions thereof as may be deemed appropriate.

Your Honor, we submit that this compliance has not been made in this case and I say it in all due respect; we do not want to get involved in this, it is not our concern, but Mr. Spicer here, of course, has a duty to obey, and we respectfully say to the Court that we are not trying to obstruct but, of course, as a Federal officer, he has to abide by those rules and regulations which are imposed upon him by virtue of his office and employment and we respectfully pray to Your Honor to quash the subpoena to Mr. Spicer due to the fact that the section stated has not been complied with by the litigant, and also, Your Honor, in Title 44, United States Code, Section 307, I would like to read one sentence from that as pertinent to this inquiry:

". . . the contents of the Federal Register shall be judicially noted and without prejudice to any other motion or citation and may be cited by volume and page number . . ."

Your Honor, I have been reading from the Code of Federal Regulations which is a codification of the Federal Register which Your Honor may take judicial notice of. If Your Honor desires to have that section I will be glad to furnish it. With all due respect, we sincerely ask the Court to quash the subpoena, we can do nothing else under the applicable law.

COURT: Is this matter now before the Fourth Circuit?

MR. BASS: Yes, Your Honor, the very same thing occurred in Charlotte about three months ago.

(DISCUSSION BY COUNSEL AND THE COURT.)
MOTION TO QUASH SUBPOENA ALLOWED: Objection—Overruled—Exception. This is RESPONDENT'S EXCEPTION #17.

MR. BASS: Let the record show that I am making this motion only on behalf of Mr. Spicer because it would be a violation of the law for

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for him to testify; I do not want it to sound as though it involves the merits of the case at all; I am here to represent Mr. Spicer in his official capacity.

(Counsel confer at the Bench.)

(THE JURY RETURNS TO THE COURTROOM.)

MR. MORGAN: Your Honor, Mr. Bass, Assistant United States Attorney, from Raleigh, would like to interpose an objection and motion.

MR. BASS: May it please the Court, my name is Gerald L. Bass, Assistant U. S. Attorney, from Raleigh; I am here in my official capacity to represent Mr. Spicer, who is the Agent in Charge of the Secret Service Department of North Carolina; I am here to object to his testimony in this matter due to the Federal regulations, Title 31, United States Code, Section 1.3, which prohibits Mr. Spicer or anyone in a like position from testifying in this court or any other tribunal concerning any information or any document which he may have accumulated in his official capacity as a member of the United States Secret Service. The only way that Mr. Spicer could testify would be upon an affidavit submitted to the Secretary of the Treasury or one of his assistants requesting permission to testify and stating in detail the nature of his testimony and for that reason we have to object to Mr. Spicer testifying in this tribunal due to the laws which prohibit him from doing so and we make this objection in all due respect because of the applicable law as it now stands.

COURT: Is there anything further?

MR. MORGAN: Nothing further, Your Honor, except that we, as we have already mentioned, recognize that this is the law and that there is some question in the court now whether the regulation is valid and will hold up; we also recognize that until that matter has been determined by the United States Court of Appeals for the Fourth Circuit that the motion is valid.

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of facts to support the judgment entered denying respondent's motion for a new trial. (Assignment of Error Nos. 1 and 2)

That the Court did further make error in some of the finding of facts which it did make, to wit: The portion of the judgment which reads: "In that it is made to appear to the Court that the evidence offered on behalf of the respondent involves witnesses who were subpoenaed at the original trial of this matter in October 1967." The record presents that subpoenaes were issued but it does not show that they were served on any of the witnesses *with the exception of Perry and Jones.* Respondent argues that the judgment as entered did not make any findings of fact showing in what respects the proposed new evidence does not meet the requirements to the granting of a new trial.

Respondent thus argues that the Court erred by not making the necessary findings of fact to support the judgment as entered and cites in support of his argument: MOONEYHAM v. MOONEYHAM, 249 NC 641; GARRETT v TRENT, 216 NC 162; CHOZEN CONFECTIONS, INC. v JOHNSON, 218 NC 500; PERKINS v SYKES, 233 NC 147.

NUMBER (4):

Argument Number 4 is directed to the error of the Court in denying respondent his N.C. and U.S. constitutional rights by not granting him a new trial on the grounds of newly discovered evidence. (Assignment of Error Nos. 1 and 2)

The provisions of the N.C. Constitution and the U.S. Constitution at issue in the present cause being as follows:

N.C. CONSTITUTION ARTICLE I SECTION 17 THE PORTION THEREOF WHICH READS AS FOLLOWS: "No person ought to be taken, imprisoned or disseized of his freehold, liberties or

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In The

Supreme Court of the United States

October Term 1969

No. 1238

ELAM REAMUEL TEMPLE

Petitioner

Vs.

THE NORTH CAROLINA STATE BAR

Respondent

PETITION FOR A REHEARING FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA AND THE NORTH CAROLINA COURT OF APPEALS

JOHN W. HINSDALE
Attorney at Law for Petitioner
808 Lawyers Building
Raleigh, North Carolina

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To: The Honorable WARREN EARL BURGER, Chief Justice and to the Honorable Associate Justices of the Supreme Court of the United States of America:

Petitioner, Elam Reamuel Temple, respectfully petitions for a rehearing on his petition for a Writ of Certiorari to the Supreme Court of North Carolina and the North Carolina Court of Appeals to review their judgments entered August 14, 1968, November 13, 1968, January 21, 1969, October 22, 1969 and December 2, 1969. That the judgments appealed from being Superior Court judgment of Johnston County North Carolina 69-CvS-312 May 5, 1969 and October 16, 1967.

That the United States Supreme Court denied petitioner's petition for a Writ of Certiorari April 6, 1970.

OPINION BELOW

The opinion of the North Carolina Supreme Court is reported

in 275 N.C. 682 and the opinion of the Court of Appeals of North Carolina is reported in 6 N.C. App. 437.

JURISDICTION

Judgment of the North Carolina Supreme Court was entered on December 2, 1969. The jurisdiction of this Court is invoked under 28 U.S. Code, Section 1257 (3) and Rule fifty (58) eight of the United States Supreme Court.

QUESTIONS PRESENTED

(1) Was the petitioner deprived of his constitutional rights by the delay in the bringing of the action by respondent?

(2) Did the trial Court err by preventing petitioner from presenting his evidence at the trial of the cause in October 1967?

(3) Was the petitioner deprived of his constitutional rights by the denial of his motion for a new trial on the grounds of newly discovered evidence?

(4) Is the return on the subpoena of L. T. Huff, United States Secret Service Agent, "that he had been dead about a year", false and untrue and as such constitutes a fraud?

SUMMARY STATEMENT

A summary statement of the cause has previously been presented in petitioner's petition for a Writ of Certiorari.

RAISING OF THE FEDERAL QUESTIONS

Raising of the federal questions have previously been presented in petitioner's petition for a Writ of Certiorari.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

Some of the reasons relied on for the allowance of the Writ of Certiorari have previously been presented in petitioner's petition.

REASONS RELIED ON FOR A REHEARING AND ALLOWANCE OF THE WRIT

QUESTION NUMBER ONE

Respondent presents in his brief and answer to the petition that the delay in the bringing of the action was due to the actions of the petitioner. The record does not sustain this allegation. The alleged first cause of action against petitioner is alleged to have happened July 18, 1963, summons in the bar proceeding was not issued until September 8, 1966. The Federal contempt proceedings were commenced September 1964. After the contempt proceedings had been litigated for some two years with unusual news coverage the present case was commenced against petitioner. Respondent waited for over two years after the commencement of the Federal contempt proceeding during which time the press built up considerable public sentiment about the matter and the respondent used the series of Federal convictions as a springboard for a conviction in the bar case. During the time when the facts were being aired in Federal Court as to the first alleged cause of action petitioner had no reason to believe action was being anticipated by respondent. Petitioner argues that there was an unreasonable delay in the bringing of the action and that his demurrer in the trial Court should have been sustained.

QUESTION NUMBER TWO

Did the trial Court err by preventing petitioner from presenting his evidence at the trial of the cause in October 1967?

Agents Mr. Spicer & Mr. Tarlton were not permitted to testify. It is admitted that no permission was obtained from the Secretary of the Treasury of the United States and that same was not necessary under the facts and circumstances of the present case.

That the U.S. Attorney who appeared on behalf of witnesses Spicer & Tarlton was in error in citing Title 31 Section 1.3 as authority to quash the subpoenaes. Section 1.3 deals with ex-

plaining the meaning of various terms used in Title 31 U.S. Code of Federal Regulations. At the trial of the cause the U.S. Attorney cited as his authority to quash the subpoenaes for Spicer & Tarlton the letter of the U.S. Attorney General as heretofore setforth in petitioner's petition. Title 31 Section 1.10 appears to be the section of the Federal Code of Regulations which applies in the present case and petitioner challenges the validity thereof as authority to quash the subpoenaes.

Title 31 Section 1.10 provides: "Testimony or the production of records in a Court or other proceedings: (a) Treasury Department officers and employees are prohibited from testifying or otherwise furnishing information obtained as a result of their official capacity or in connection with the transaction of public business or in compliance with a subpoena or other order or demand of any Court or other authority without the prior approval of an officer authorized to determine the availability of record under these regulations. (b) Treasury Department officers and employees are prohibited from furnishing any record in compliance with subpoenaes duces tecum or other order or demand of any Court or other authority without the prior approval of an officer authorized to determine the availability of records under the regulation in part: (c) In Court cases in which the U.S. or the Treasury Department is not a party, where the giving of testimony is desired, an affidavit by the litigant or his attorney setting forth the information with respect to which the testimony of such officer or employee is desired, must be submitted before permission to testify will be granted. Permission to testify will in all cases be limited to the information setforth in the affidavit or to such portion thereof as may be deemed proper. (d) where approval to testify or to furnish records in compliance with a subpoena, order or demand is not given the person to whom it is directed shall, if possible, appear in Court or before the other authority and respectfully state his inability to comply in full with the subpoena, order or demand, relying for his actions upon this section."

In the present case it was never shown to the trial Court that the Secretary of the Treasury or any officer thereof objected to the agents testifying. The Assistant U.S. Attorney was the one who appeared and objected. It was never shown to the trial Court that the information sought to be obtained from the witnesses was in any way connected with their official duties as agents of the Treasury Department. The trial Court made no findings of facts that they were even treasury agents, that their testimony was privileged or that the testimony sought was gained in their official capacity as agents of the Government. Although the U.S. Government was not a direct party to this cause, certainly it may be said that indirectly the Government was a party to the actions. The status of an attorney appears to apply equally in Federal and State Courts. His status in either the Federal Court or State Courts absolutely affects his status in the other. For this reason it was not necessary that the U.S. Government be a party to the action in order for the testimony to be proper without the procuring of permission.

In Boske Vs. Comingore the Court stated; 177 U.S. 459 "We are faced here only with the legal question of the scope of the delegated power of the Attorney General. There is no procedure for questioning the scope of the delegated power of the Attorney General. Plaintiff's only adequate or effective relief can be granted in this Court. (see Leedom vs Kyne, 357 U.S. 184.) Under these circumstances the Court has jurisdiction both under the Administrative Act 5 U.S.C. 701-706 and in the exercise of its discretionary powers under the Declaratory Judgment Act 28 U.S.C. 2201."

In the case of COONEY VS. DRYDOCK CO., 288 F S 708 July 26, 1968 D. J. HIGGINBOTHAM stated: "A claim of executive privilege is validly made only by the head of the executive department or administrative agency involved, after actual personal consideration by the officer." (United States vs. Reynolds 345 U.S. 1)

In the present case the basis and foundation of the bar case as

to the first alleged cause of action was founded in Federal Court. The two cases, that is the Federal contempt case and the Bar case were so related that no permission was necessary when in fact no showing of permission was presented in the contempt case.

That the denial of the testimony of witnesses Spicer and Tarlton violated the spirit and meaning of the due process clauses of the U.S. Constitution (Amendment XIV Sec 1) (Amendments V & VI of the U.S .Constitution.) Petitioner challenges the validity of Title 31 Sec 1.10 of the Code of Federal Regulations, as applied to the facts and circumstances in the present case.

QUESTION NUMBER THREE

Petitioner is entitled to a new trial on the grounds of newly discovered evidence for the reasons presented in his petition for a Writ of Certiorari.

QUESTION NUMBER FOUR

Does the return on the subpoena of L. T. Huff "that he had been dead about a year" constitute an untrue and false return? In petitioner's petition he alleges that such constitutes a fraud. The respondent has failed to setforth any answer to this contention and therefore admits same to be true. Since this witness first appeared in the Federal Court in the contempt case against petitioner the identity and location of this witness will not be revealed by the Government. There has been no showing by the respondent as to when he died, where he died and the place of his burial. At the time when this witness first appeared and testified against petitioner in the contempt proceedings petitioner was not aware that he was an imposter. It is only through the medium of requiring his appearance and testifying in the Bar case that petitioner can show that he was an imposter and that the Federal proceedings were founded on a fraud, and that the subsequent convictions and imprisonment of petitioner in Federal Court was not well founded. It

is urgently argued that the Counsel for the N.C. State Bar is not only under a legal but a moral duty and obligation to reveal the identity and present Mr. Huff at the trial of this case.

Petitioner argues that sufficient reasons are setforth in his petition for a Writ of Certiorari and his petition for a rehearing for the allowance of the Writ of Certiorari. That the State Courts of North Carolina have so far departed from the basic and usual course of judicial proceedings as to call for the exercise of this Court's power of SUPERVISION AND DIRECTION to the end that a fair trial may be had and all of the evidence presented.

WHEREFORE: Petitioner prays that a rehearing be granted in this cause and that a Writ of Certiorari be issued to the Supreme Court of North Carolina and the North Carolina Court of Appeals and that the opinions and judgments of Johnston County Superior Court, the North Carolina Court of Appeals and the North Carolina Supreme Court be reviewed and reversed.

RESPECTFULLY SUBMITTED

Dated at Raleigh, North Carolina
April 17, 1970.

JOHN W. HINSDALE
Attorney at Law for Petitioner
808 Lawyers Building
Raleigh, North Carolina

APPENDIX

CERTIFICATE OF COUNSEL

I, John W. Hinsdale, attorney at law, Raleigh, North Carolina do hereby certify that this petition for a rehearing is presented in good faith and not for the purpose of delay. That the petition for rehearing is restricted to intervening circumstances of substantial and controlling effect (Sanitary Refrigerator Co. Vs. Winters 280 U.S. 30,34 footnote 1). That there is also set-forth in said petition substantial grounds for the allowance of the writ which have not previously been presented. (Schriber Vs. Cleveland Trust Co. 305 U.S. 47,50)

That I am familiar with the facts and circumstances surrounding this case having represented petitioner since the inception of the matter October 1964 in Eastern District Federal Court for North Carolina. That there is considerable merit to his contention that his constitutional rights have been violated due to the lack of the required appearance and testimony of his witnesses.

This the 17th day of April 1970.

John W. Hinsdale atty at law for
Petitioner, Raleigh, N. C.